WARDEN = John R. Owen

U.S. Department of Justice

Complaint Adjudication Office

Agency Complaint Number BOP-2010-0029
DJ Number 187-3-2800

FEB 14 2012

950 Pennsylvania Avenue, N.W.
Patrick Henry Building, Suite 5300
Washington, DC 20530

DEPARTMENT OF JUSTICE FINAL AGENCY DECISION

in the matter of

Shawnte Coleman v. Federal Bureau of Prisons

On November 1, 2009, complainant Shawnte Coleman, a Correctional Officer at the Federal Correctional Institution in Williamsburg, South Carolina (FCI-Williamsburg) filed a complaint against the Bureau of Prisons alleging employment discrimination on the basis of her race (African-American), mental disability, and retaliation, in violation of Section 717 of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16 (Title VII) and Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791.

The issue accepted for investigation is whether BOP "unlawfully discriminated against complainant on the bases of [her] race (Black), disability (mental), and reprisal in relation to the following: On September 30, 2009, and October 1, 2009, you allege that your requests for a reasonable accommodation were ignored by Human Resources and management." (Ex. 5).

BOP's investigation concluded on February 1, 2010. The Complaint Adjudication Office received this case on April 21, 2010, for issuance of a final Department of Justice decision.

Facts

Complainant was sexually assaulted by an inmate on January 16, 2009. (Ex. 8 at 20-21). Since March 2009, complainant has been in worker's compensation status for post traumatic stress disorder (PTSD). (Ex. 8 at 11, 26). Captain Eric Rayburn was

complainant's immediate supervisor and Associate Warden Bobby Meeks was complainant's second-line supervisor. John Owen was Warden of the facility. Safety Manager Michael Bink was a co-worker of complainant. (Ex. 8 at 19). His scope of responsibility included worker's compensation, temporary duty assignments, and safety issues. (Ex. 8 at 19).

A. Complainant's Allegations

1. PTSD Diagnosis

Complainant was diagnosed with PTSD in February 2009. (Ex. 8 at 14). Complainant said that she was sexually assaulted while on duty on January 16, 2009, when an inmate touched her vaginal area underneath her clothing. (Ex. 8 at 20). Complainant said that she called for assistance four times before any officers responded. (Ex. 8 at 20).

When asked if her PTSD substantially limited complainant's major life activities, complainant stated that her symptoms included hypervigilance, fear of crowds, insomnia, and mental repetition of the incident. (Ex. 8 at 14-15). Complainant also mentioned that she takes medication to help her sleep. (Ex. 8 at 14).

According to complainant, her doctor did not want her to engage in work duties that required searching, handcuffing, or otherwise touching inmates. The doctor said she was to refrain from those jobs for an initial period of two and a half weeks. (Ex. 8 at 5, 6). Examples of posts she could handle during that time included the control room, the administrative area, and phone monitoring. (Ex. 8 at 17).

When asked if she told BOP management about her PTSD diagnosis, complainant stated that the Department of Labor (DOL) sent documents to BOP management on her behalf. (Ex. 8 at 15).

2. Post-Assault Employment

Complainant said that, on the day of the assault, Rayburn told her she could go home if she wanted to, but also "tried to encourage [her] to come back and keep working." (Ex. 8 at 21). Complainant worked the rest of her shift. (Ex. 8 at 12). Complainant took the next day off, followed by two previously scheduled days of leave, then returned to work for about a week. (Ex. 8 at 21-22). Complainant felt tense and nervous to be "back in the same place with the same officers who didn't respond," and "felt nervous, uneasy, agitated, and irritable." (Ex. 8 at 30-31).

Complainant said she asked Bink if the facility could give her administrative leave. She "tried to make him aware of the tension [she] felt when [she] was locked on the range with the inmate," but Bink tried to convince her to come back to work. (Ex. 8 at 22). Complainant left Bink's office because she believed he was not being receptive. (Ex. 8 at 22).

Complainant stated that Bink also refused to provide her a temporary duty assignment for which she was qualified, thus "forc[ing] [her] to be placed on worker's compensation." (Ex. 8 at 8, 24). She concluded that Bink made a false statement to DOL, resulting in her ineligibility for the temporary duty assignment. (Ex. 8 at 24). On April 11, 2009, according to complainant, Bink placed her on AWOL status. (Ex. 8 at 25). She described Bink as "verbally abusive, constantly yelling at me and talking over me while I was attempting to provide him with information. His actions have been unprofessional, disgraceful, and intolerable." (Ex. 8 at 7-8). She alleges that because Bink "intentionally discriminated against [her] as it pertains to Worker's Compensation Policy," she "had to contact the Department of Labor on several occasions to force [Bink] to comply with their written policy," and that she "went almost two months without finances because [Bink] was reluctant to assist [her.]" (Ex. 8 at 8).

3. Initial Request for Accommodation

Complainant submitted an initial request for accommodation in March 2009. (Ex. 8 at 17). She said she requested a position where she would not have physical contact with inmates, such as in mobile, the control room, the administrative area, or phone monitoring. (Ex. 8 at 17). Complainant said she did not use a form DOJ-100A for this request. Instead, she emailed Rayburn "requesting to work the [lieutenants'] area to help with the paperwork just until I could get back into the flow of things." (Ex. 8 at 17). Complainant also stated that this request did not mention whether she was seeking a temporary or permanent accommodation. (Ex. 8 at 17). Complainant alleges that Rayburn's refusals to provide her a reasonable accommodation or engage in the interactive process violated the Americans with Disabilities Act (ADA), the Accommodations Manual, and DOJ's Worker's Compensation Policy. (Ex. 8 at 4). The ADA does not apply to federal employment. Section 501 of the Rehabilitation Act does, and was amended in 1992 to apply the standards of the Americans with Disabilities Act (ADA) to complaints of discrimination by federal employees or applicants for employment. The Rehabilitation Act was amended in 1992 to apply the standards of the Americans with Disabilities Act (ADA) to complaints of

discrimination by federal employees or applicants for employment. Addison v. Department of Defense, EEOC DOC 0120081932, 2011 WL 3647282 (Aug. 8, 2011)(citations omitted). According to complainant, the worker's compensation policy states that supervisors have a responsibility to assist employees in returning to work. (Ex. 8 at 7). Complainant alleges that, instead of beginning the interactive process and considering whether to accommodate her by adjusting her shift so she could avoid physical contact with inmates, as her physician recommended, Rayburn "barred [her] from employment." (Ex. 8 at 4). Complainant says that Rayburn never contacted her concerning her medical condition, employment, financial status, accommodation request, worker's compensation, or anything else after the incident. (Ex. 8 at 7).

4. Second Request for Accommodation

Complainant stated that on September 30, 2009, she emailed a Form DOJ-100A to Human Resource Manager/Accommodations Coordinator Nicole Cunningham and Union President William Turner. (Ex. 8 at 3, 11). Complainant said that she submitted the same form to Rayburn and Bink on October 1, 2009. (Ex. 2 at 8). The record does not explain why complainant waited six months to file this request for accommodation. The form requested a temporary accommodation for complainant's PTSD. (Ex. 8 at 3, 11). Complainant stated that she sent a restriction letter from her psychologist with the form. (Ex. 8 at 3). According to complainant, the letter said she "needed to be placed in a position such as mobile, the control room, or another department for a short period of time that would not aggravate [her] condition." (Ex. 8 at 3). Complainant stated that the Form 100-A adequately explained why she needed this accommodation. (Ex. 8 at 3-4). Complainant said that Turner forwarded the documents to Bink and Rayburn. (Ex. 8 at 6).

When complainant inquired into the status of her request, Cunningham told her she had forwarded complainant's Form DOJ 100A, but not the supporting medical information, to Assistant General Counsel and Reasonable Accommodations Coordinator Elizabeth Nagy. (Ex. 8 at 9). Complainant called Nagy to request that she help complainant return to work as soon as possible. (Ex. 8 at 9). According to complainant, Nagy told complainant she had not read the form. (Ex. 8 at 9). Nagy asked complainant about her ability to work around inmates. (Ex. 8 at 9). According to complainant, Nagy stated that either Nagy or Cunningham would respond in a few days, but complainant never heard anything. (Ex. 8 at 9). Complainant said that Bink also never replied regarding her request for accommodation. (Ex. 8 at

7). Complainant contacted her EEO Counselor to file this complaint. (Ex. 8 at 3-4).

5. Denial of Reasonable Accommodation Request

In November 2009 complainant received a Form DOJ-100C signed by Warden Owen denying her request. (Ex. 8 at 10). Complainant said that Owen did not provide a specific reason for the denial. (Ex. 8 at 10). Complainant stated that Owen provided an intentionally false statement by writing that complainant did not have enough evidence of a permanent disability, when complainant never claimed that her disability was permanent. (Ex. 8 at 10). Complainant said that no one from BOP told her whether a temporary accommodation would be possible. (Ex. 8 at 13).

Complainant believes that she was discriminated against because of race, disability, and reprisal because she "can't think of anything negative management can use against me but my race, reprisal, and mental disability." (Ex. 8 at 27). "I don't play the race card," complainant stated, adding, "however, it is very clear that Warden Owen and Mr. Bink have a personal problem with people of African descent." (Ex. 8 at 27). Complainant stated that other minority employees "are going through the same thing with Management regarding disabilities in comparison to Caucasian employees with non-work related disabilities." (Ex. 8 at 27). Complainant stated that her EAP counselor knew several of these employees, and that many of them filed similar EEO complaints against Owen. (Ex. 8 at 27).

Complainant also alleges that "numerous Caucasian employees have been accommodated and/or provided with temporary duty assignments without any problems." (Ex. 8 at 28). According to complainant, another employee named Officer Jacobs received a reasonable accommodation for work-related and non-work related injuries. (Ex. 8 at 12-13). The record does not provide details.

Complainant said that she received "exceeds" and "outstanding" performance evaluations, was professional and respectful, and was a "team player" who "got along with her co-workers and supervisors." (Ex. 8 at 27).

Complainant also stated that she was afraid to apply for another government position because she feared "management [was] going to ruin [her] name out of retaliation, and that's depressing." (Ex. 8 at 14). She also expressed fear to return to FCI-Williamsburg "knowing they don't want me there." (Ex. 8 at 14). Complainant also said she was afraid "they might set me up

to get me hurt or jailed for something I can't prove I didn't do." (Ex. 8 at 14).

B. Management's Response

Warden Owen said that on October 30, 2009, he received complainant's request for reasonable accommodation. (Ex. 9 at 3). Owen stated that he reviewed complainant's request with Cunningham and Nagy.

Owen said that on November 5, 2009, he issued complainant a written denial of reasonable accommodation because she provided insufficient evidence to establish she was permanently disabled. (Ex. 9 at 4). Owen said that he never spoke with complainant about her request, because Cunningham would have been the point of contact. (Ex. 9 at 5). Owen remembered a prior EEO complaint that complainant filed in June 2009 alleging discrimination on the basis of race, sex, national origin, disability, and reprisal, but Owen did not recall the specifics. (Ex. 9 at 7).

Bink stated that he never spoke to complainant concerning her reasonable accommodation request. (Ex. 11 at 4). Bink said that, as Safety Manager, he is not part of the reasonable accommodation process. (Ex. 11 at 7). Bink stated that he met with the reasonable accommodations coordinator and complainant's representative about complainant's request in Fall 2009. (Ex. 11 at 4). Bink did not provide a date for the meeting. Bink said that complainant was notified of the meeting but she did not attend. (Ex. 11 at 4). They determined that complainant could not receive a reasonable accommodation because she had an ongoing worker's compensation case. (Ex. 11 at 4). Bink said he had no knowledge of complainant's prior EEO activities. (Ex. 11 at 8).

Rayburn said he never communicated with complainant about her requests for a reasonable accommodation. (Ex. 12 at 5). He could not recall whether complainant had requested a temporary or permanent accommodation. (Ex. 12 at 5). In reviewing his file, Rayburn noted that it contained medical documentation stating, "please allow [complainant] not to work in an area where there is physical contact with inmates." (Ex. 12 at 6). Rayburn stated that he had nothing in his file that mentioned a disability. (Ex. 12 at 6-7). Rayburn further stated that he was unaware of complainant's past participation in the EEO process. (Ex. 12 at 7).

Cunningham told the EEO investigator that she discussed complainant's reasonable accommodation request with Nagy. (Ex. 13 at 3-4). According to Cunningham, complainant's request was denied based on insufficient information. (Ex. 13 at 4).

Cunningham said that Nagy told her that there was insufficient evidence "for even the temporary duty position [complainant] was requesting." (Ex. 13 at 5). Cunningham said that no one in her office requested that complainant provide additional information. (Ex. 13 at 4). Cunningham said she was unaware of complainant's prior EEO complaint. (Ex. 13 at 8).

Prior to her interview with the EEO investigator, Cunningham was interviewed by EEO Counselor Denise Jackson. Although Jackson's report does not provide the date of the interview, the report was completed on October 28, 2010. According to Jackson's report, Cunningham said that additional information was needed concerning what work duties complainant was capable of performing and whether complainant's request was permanent. (Ex. 2 at 4). Cunningham also stated that she would send complainant a letter requesting additional information from her physician asking more specifically about her ability to work in a correctional environment. (Ex. 2 at 4). The file contains no such letter.

Nagy told the EEO investigator that complainant's request was denied because complainant provided insufficient evidence. (Ex. 10).

Turner said that "[i]t seems to be a common practice for minorities to continue to be discriminated against" by FCI-Williamsburg's administration. (Ex. 14 at 7). According to Turner, one African-American employee, who was a 30% disabled veteran, was terminated after he asked for a reasonable accommodation. (Ex. 14 at 7). Turner said that FCI-Williamsburg's administration harassed a woman of mixed race after she requested a reasonable accommodation, and that she became "so stressed out that she went into leave without pay status" and never returned. (Ex. 14 at 7).

Correctional Officer Michael Shoemaker said that complainant's union representative told him she examined the facility's record of granting reasonable accommodations and found that "it gave definite indication that accommodations were being provided for white male officers. Black females and Hispanics were not being accommodated no matter what the request." (Ex. 15 at 7). Shoemaker added that he advised the representative to file a request for a reasonable accommodation. (Ex. 15 at 4).

C. Documentary Evidence

The record includes copies of complainant's position description, the DOJ Form 100A (Request for Accommodation) and supporting medical evidence consisting of four doctor's reports;,

an organization chart, a workforce profile for the complainant's work unit, the DOJ Manual and Procedures for Providing Reasonable Accommodations, BOP's program statement on worker's compensation, FCI Williamsburg's general post orders, and additional documents provided by the complainant.

Also included is a Form 100C signed by Owen, and dated November 5, 2010. (Ex. 18). The form states that complainant's request for a reasonable accommodation was denied because complainant "provided insufficient evidence to establish she suffers from a permanent disability." (Ex. 18).

The record also contains a Form 100A dated April 22, 2009. (Ex. 25 at 18). That form gives the reason for request as "disability" and states, "I'm requesting an accommodation in accordance with my restriction written by my health professional. My restriction was given to the first line Supervisor of E/W on 3/31/09. A clarification of my restriction was given to the Captain on 4/2/2009 as well as the Safety Manager." (Ex. 25 at 18). Complainant was not asked about this form during her EEO interview.

Analysis

A. Disability

The Rehabilitation Act of 1973 makes it unlawful for a federal employer to fail to reasonably accommodate a "qualified person with a disability." 29 U.S.C. § 791. The applicable regulations define "disability" as (1) "a physical or mental impairment that substantially limits one or more of the major life activities of such individual," (2) "a record of such an impairment," or (3) "being regarded as having such an impairment. . . .[t]his means that the individual has been subjected to an action prohibited by the ADA as amended because of an actual or perceived impairment that is not both 'transitory and minor.'" See 29 C.F.R. § 1614.203(a)(1); 29 C.F.R. § 1630.2 (2011).

1. Complainant's Disability

A "mental impairment" is [a]ny mental or psychological disorder, such as an intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities." 29 C.F.R. § 1630.2(h)(2) (2011).

"Major life activities" include, but are not limited to: "[c]aring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting,

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"Major life activities" include, but are not limited to: "[c]aring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting,

bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working." 29 C.F.R. § 1630.2(I)(1)(i) (2011). The regulations clarify that "[i]n determining other examples of major life activities, the term "major" shall not be interpreted strictly to create a demanding standard for disability. Whether an activity is a "major life activity" is not determined by reference to whether it is of "central importance to daily life." 29 C.F.R. § 1630.2(I)(2) (2011).

"The term 'substantially limits' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. 'Substantially limits' is not meant to be a demanding standard." 29 C.F.R. § 1630.2(J) (2011). Thus,

> [a]n impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting.

29 C.F.R. § 1630.2(J) (2011). Further, the impairment need not last for a specific duration. Id. at § 1630.2(J)(ix) (noting in part that "[t]he effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of this section.").

There is sufficient evidence that complainant has a disability covered under the Rehabilitation Act. Complainant has set forth adequate proof that she was diagnosed with PTSD. She has also demonstrated that her symptoms included anxiety, hypervigilance, fear of crowds, flashbacks, and insomnia. Complainant also presented evidence that she required sleep medication. Thus, the record demonstrates that complainant was substantially limited in the major life activities of sleeping and concentrating.

In addition, the record shows that complainant experienced a substantially limiting impairment because of the duration of her ongoing treatment. As of September 29, 2009, almost ten months after the assault, complainant's mental health provider recommended continued treatment with a reevaluation at her next appointment (Ex. 17). Although complainant did not set forth medical evidence stating that her condition would be permanent, her treatment had continued for ten months and was still ongoing.

The regulations implementing the Rehabilitation Act do not require complainant to prove that she had a permanent disability. Indeed, they even note that an impairment lasting less than six months can qualify as substantially limiting. Thus, there is a sufficient factual basis to conclude that complainant's PTSD had endured for a substantial amount of time while she was receiving treatment, and would continue for an indefinite period of time. The record also demonstrates that complainant made her condition known to BOP management. Complainant stated that her medical documents were forwarded to BOP management by DOL. Complainant also documented her condition on the Form 100A and submitted accompanying medical documentation.

2. Duties to Accommodate and Engage in Interactive Process

Under the Rehabilitation Act, an agency must reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an employee, unless the agency can demonstrate that the accommodation would impose an undue hardship or would fundamentally alter the job. 29 C.F.R. § 1614.203(c)(1); 42 U.S.C. § 12112(b)(5)(A).

The record demonstrates that complainant made her disability known to BOP management through her request for accommodation and by having the Department of Labor forward the documents from her worker's compensation case. Thus, BOP had a duty to engage in an interactive process with complainant to determine a reasonable accommodation. "Both the courts and the federal regulations implementing the ADA recognize that the ADA contemplates an 'interactive process', through which both the employer and the employee seek to identify a reasonable accommodation of the employee's disability." Feldman v. Law Enforcement Assoc. Corp., 2011 WL 891447 (E.D.N.C. March 10, 2011); Accord Love v. Donahoe, EEOC DOC 0120093794 (August 02, 2011) ("The Agency is reminded of its duty to engage in the interactive process upon notice from a qualified individual with a disability of the need for an accommodation.")(citing the EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (revised October 17, 2002)). "Once an employer's responsibility to provide a reasonable accommodation is triggered, it may be necessary for the employer to engage in an 'interactive process' to determine the appropriate accommodation under the circumstances." Crabill v. Charlotte Mecklenburg Bd. of Educ. 423 Fed. Appx. 314, 322-23 (4th Cir. 2011); (citing 29 C.F.R. § 1630.2(o)(3)); see also Taylor v. Phoenixville School Dist., 184 F.3d 296, 311-12 (3d Cir. 1999) (finding that "both parties have a duty to assist in the search for appropriate reasonable accommodation and to act in good

faith")(quoted in Crabill, 423 Fed Appx. 323); Haneke v. Mid-Atlantic Capital Mgmt., 131 Fed. Appx. 399, 399-400 (4th Cir. 2005) (unpublished) (finding that "[i]mplicit in the fourth element is the ADA requirement that the employer and employee engage in an interactive process to identify a reasonable accommodation"); Taylor v. Principal Fin. Group, Inc., 93 F.3d 155, 165 (5th Cir. 1996)(explaining that "the employee's initial request for an accommodation ... triggers the employer's obligation to participate in the interactive process of determining one"); Jakubowski v. Christ Hosp., 627 F.3d 195, 202 (6th Cir. 2010).

> [C]ourts should look for signs of failure to participate in good faith or failure by one of the parties to make reasonable efforts to help the other party determine what specific accommodations are necessary. A party that obstructs or delays the interactive process is not acting in good faith. A party that fails to communicate, by way of initiation or response, may also be acting in bad faith. In essence, courts should attempt to isolate the cause of the breakdown and then assign responsibility.

Beck v. University of Wisc. Bd. of Regents, 75 F.3d 1130, 1135-36 (7th Cir. 1996)), quoted in Crabill, 423 Fed. Appx. 323. While engaging in the interactive process, both parties must communicate directly and exchange essential information, and neither party may obstruct the process. See Haneke, 131 Fed. Appx. at 400; Barnett v. U.S. Air, 228 F.3d 1105, 1114-15 (9th Cir. 2000).

"However, an employee cannot base a reasonable accommodation claim solely on the allegation that the employer failed to engage in an interactive process." Walter v. United Airlines, Inc., 232 F.3d 892 (Table), No. 99-2622, 2000 WL 1587489, at *4 (4th Cir. Oct. 25, 2000). "Rather, the employee must demonstrate that the employer's failure to engage in the interactive process resulted in the failure to identify an appropriate accommodation for the disabled employee." Id.

The record establishes that BOP failed to engage in the interactive process with complainant, and that this denial resulted in a failure to identify whether an appropriate accommodation was possible. The evidence indicates that BOP simply denied complainant's request for reasonable accommodation. Although Cunningham told the EEO Counselor that BOP needed

additional information from complainant, the record contains no evidence of such a request. No BOP manager described requesting additional information from complainant, and complainant stated that no request was made. Instead, BOP denied complainant's request outright without attempting to engage in any interactive process. As a result, complainant did not receive any reasonable accommodation that might have been appropriate.

3. Complainant's Status as a Qualified Person with a Disability

To prevail under the Rehabilitation Act, the evidence must also show that complainant is a qualified person with a disability. "The term 'qualified,' with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position." 29 C.F.R. § 1630.2(M) (2011). The record demonstrates that complainant was qualified to work as a correctional officer prior to her assault. By all accounts, her performance prior to her PTSD exceeded BOP's expectations. The performance evaluation in the record, for the period ending less than four months before the assault, listed "outstanding" or "exceeds" for each criterion. None of the BOP managers expressed any concern with complainant's job performance. The interactive process should have discovered whether complainant still could have performed as a correctional officer with an accommodation. That never occurred. Therefore, based on this record, complainant must be considered to be employee within the meaning of the Rehabilitation Act, if given a reasonable accommodation removing her from situations that may trigger her PTSD. Accordingly, complainant was a qualified person with a disability.

Thus, BOP's failure to engage in the interactive process with complainant violated the Rehabilitation Act.

II. Retaliation

To establish a prima facie case of retaliation under Title VII, complainant must show (1) he engaged in a protected activity; (2) the agency was aware of the protected activity; (3) subsequently, he was subjected to adverse treatment by the agency; and (4) a nexus exists between the protected activity and the adverse treatment. Sharifi v. Dep't of Veterans Affairs, EEOC App. No. 0120065217 (June 23, 2008) (citing Whitmire, EEOC App. No. 01A00340). Absent any direct evidence of retaliation, complainant must satisfy the Supreme Court's three-step process

for establishing the parties' burdens of proof in disparate treatment cases. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). First, the record must show by a preponderance of the evidence that a prima facie case for discrimination exists by representing such facts that, if unexplained, reasonably give rise to an inference of discrimination. Id. Second, if the record establishes a prima facie case, the employer must articulate a legitimate, nondiscriminatory reason for its actions. Texas Dept. of Cmty. Affairs v. Burdine, 450 U.S. 248, 253-56 (1981). Third, the complainant must have an opportunity to show that the record demonstrates by a preponderance of the evidence that the legitimate, nondiscriminatory reasons articulated by the employer are a pretext for discrimination. Id. at 255-56.

Although temporal proximity between the protected activity and the adverse action can be sufficient evidence of causality, the temporal proximity must be "very close." Clark County Sch. Dist. v. Breeden, 532 U.S. 268, 274-75 (2001); O'Neal v. Ferguson Constr. Co., 237 F.3d 1248, 1253 (10th Cir. 2001); Hughes v. Derwinski, 967 F.2d 1168, 1174-75 (7th Cir. 1992).

Nothing in the record suggests BOP management denied complainant's request for a reasonable accommodation because she participated in the EEO process. Although the warden denied complainant's request within weeks of her contacting the EEO office, nothing aside from this temporal proximity indicates a connection existed between BOP's denial of complainant's request and her EEO claim. Accordingly, complainant's claim of retaliation is denied.

III. Race Discrimination

Title VII of the Civil Rights Act of 1964 makes it unlawful for a federal employer to discriminate against an individual because of race. 42 U.S.C. § 2000e-16. To establish a prima facie case of race discrimination, a complainant must demonstrate that he or she 1) belongs to a protected group; 2) was qualified; 3) experienced an adverse employment action; and 4) was treated differently than similarly situated individuals not in complainant's protected group. See Texas Dept. of Cmty. Affairs v. Burdine, 450 U.S. 248, 253-56 (1981). The burden then shifts to the employer to articulate legitimate, nondiscriminatory reasons for the adverse employment action. Id.; see also St. Mary's Honor Center v. Hicks, 509 U.S. 502, 519-25 (1993). The complainant then must prove by a preponderance of the evidence that the proffered reasons are pretextual and that management was actually motivated by complainant's protected trait. See Hicks, 509 U.S. at 519-525 (1993); Burdine, 450 U.S. at 256.

The record does not support complainant's allegation of race discrimination. The record contains no evidence that BOP managers considered complainant's race in their denial of her request for reasonable accommodation. Although complainant, Turner, and Shoemaker described hearing that other African-American employees were denied reasonable accommodations while white employees were accommodated, these accounts contain insufficient detail to show that BOP's actions were based upon race rather than some other factor. In addition, complainant's general statement that Owen and Bink have a "personal problem with people of African descent," without more, is not enough to show that they harbored a racial animus against African-Americans, or that they denied complainant's request because of her race. The record contains no details concerning what actions or statements by Owen and Bink led complainant to conclude that they had problems with African-Americans. Accordingly, complainant's claim of race discrimination is denied.

Decision and Relief

The evidence shows that complainant suffered prohibited discrimination on the basis of disability when BOP management denied her September 30, 2009 request for a reasonable accommodation, which she forwarded to Rayburn and Bink on October 1, 2009. The evidence does not support an allegation that BOP unlawfully discriminated against complainant on the basis of race or retaliated against her. Thus, complainant's claims of disability discrimination and reprisal are sustained, and the following relief is ordered:

1. BOP shall engage in an interactive process with complainant to determine a reasonable accommodation. BOP shall report the results to the Complaint Adjudication Office within fifteen days of the date of this opinion.

2. BOP shall restore any leave taken by complainant in connection with her PTSD, consistent with 29 C.F.R. § 1614.501(a)(4).

3. BOP shall take appropriate corrective action to prevent further discrimination from recurring at FCI-Williamsburg consistent with 29 C.F.R. § 1614.501 (a)(2).

   Such preventive and corrective action by BOP will include providing EEO training, and particularly training on the handling of reasonable accommodation requests for all managers and employees at FCI-Williamsburg.

4. Complainant is eligible for compensatory damages recoverable under Section 102(a) of the Civil Rights Act of 1991 due to harm suffered on account of BOP's failure to engage in the interactive reasonable accommodation process. This award is to be calculated based on complainant's proffer of evidence as to the harm suffered, the extent, nature, and severity of the harm, and the expected duration of the harm caused as a result of the discrimination and hostile work environment that BOP officials caused.

   Complainant shall submit her request for compensatory damages and supporting documents, including medical documentation, if any, of her injuries suffered as a result of discrimination on the basis of disability and reprisal, to Mina Raskin, EEO Officer, Federal Bureau of Prisons, 320 First Street, N.W., Room 936, Washington, D.C. 20534. A copy of the request should be submitted to the Complaint Adjudication Office as well. Following its receipt of the compensatory damages request, BOP should either award the amount requested or determine what amount it considers an appropriate award. BOP and complainant should then attempt to agree on the compensatory damages award. If a mutually acceptable amount cannot be agreed upon the parties should notify the Complaint Adjudication Office, which will then issue a decision determining an appropriate award.

5. Complainant is statutorily entitled to reasonable attorney's fees incurred pursuant to her successful hostile work environment claim. 29 C.F.R. § 1614.501(e). If complainant's attorney is eligible for an award of attorney's fees, then within thirty days of receipt of this decision, complainant's attorney shall submit a verified statement of costs and an affidavit itemizing the attorney's fees to Mina Raskin, EEO Officer, Federal Bureau of Prisons, 320 First Street, N.W., Room 936, Washington, D.C. 20534.

   A copy of this statement should be sent to the Complaint Adjudication Office as well. 29 C.F.R. § 1614.501 (e)(2). If a mutually acceptable figure for the attorney's fees cannot be agreed upon, the parties should notify the Complaint Adjudication Office, which will then determine an appropriate award. 29 C.F.R. § 1614.501(e)(2)(ii)(A).

6. BOP shall post a notice for sixty days at FCI-Williamsburg, consistent with 29 C.F.R. § 1614.501 (a)(1).

7. BOP shall submit a report on the status of the implementation of the relief ordered in this case to the

Complaint Adjudication Office within ninety days of this decision.

Mark L. Gross
Complaint Adjudication Officer

Karen P. Ruckert
Attorney
Complaint Adjudication Office