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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 ALLISON M. GILL, an individual

12 Plaintiff,

13 v.

14 DENIS R. MCDONOUGH, Secretary,
15 United States Department of Veterans
16 Affairs;

17 ROBERT L. WILKIE, an individual;
18 DONALD J. TRUMP, an individual;
19 DOES 1 through 50, Inclusive.

20 Defendants.
21

CASE NO: '23CV1892 LAB MSB

COMPLAINT FOR:

- 1. DISABILITY DISCRIMINATION;
- 2. FAILURE TO PROVIDE REASONABLE ACCOMODATION;
- 3. FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS;
- 4. RETALIATION;
- 5. HOSTILE WORK ENVIRONMENT;
- 6. RETALIATION FOR PROTECTED SPEECH AND ASSOCIATION;
- 7. CONSPIRACY.

JURY TRIAL DEMANDED

1 Plaintiff ALLISON M. GILL, an individual, alleges as follows:
2

3 **I. INTRODUCTION**

4 As an employer, the United States Department of Veterans Affairs is not a tool of
5 the executive branch to harass and terminate those who appropriately use their First
6 Amendment rights under the free exercise clause in opposition to the sitting President.
7 ALLISON M. GILL, as a Health Systems Specialist at the West Region TRICARE
8 office in San Diego, California, provoked the ire of President DONALD J. TRUMP and
9 his Secretary of the Veterans Administration, ROBERT L. WILKIE, by daring to create,
10 host, and produce the anti-Trump and wildly successful, Webby-award winning
11 Mueller, She Wrote podcast and run a very popular Mueller, She Wrote Twitter account
12 under a pseudonym, A.G.

13 After a “witch hunt” to find out who this A.G. was, the chain of command was
14 instructed to harass Dr. Gill and force her out of the job she had held across multiple
15 administrations, making untenable, pretextual demands regarding her job requirements
16 in violation of the First Amendment of the United States Constitution, Rehabilitation
17 Act, and Title VII of the Civil Rights Act of 1964, as set forth below.
18

19 **II. PARTIES**

- 20 1. Plaintiff ALLISON M. GILL, hereinafter “**Plaintiff**,” is and at all times relevant
21 to this Complaint an individual residing in the County of San Diego, State of
22 California.
- 23 2. Defendant DENIS R. MCDONOUGH is sued in his official capacity as the present
24 Secretary of the U.S. Department of Veterans Affairs, hereinafter “VA” or
25 “Agency”. As the Secretary, Defendant is responsible for employment practices
26 and procedures within the Agency.
- 27 3. Defendant ROBERT L. WILKIE is sued in his personal capacity, he served as the
28 Secretary of the U.S. Department of Veterans Affairs from 2018-2021.

1 4. Defendant DONALD J. TRUMP is sued in his personal capacity, he served as the
2 President of the United States from 2017-2021.

3 5. The true names or capacities, whether individual, corporate, associate, or otherwise
4 of the Defendants named herein as DOES 1-50, are presently unknown to
5 Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiff
6 prays for leave to amend this Complaint to show the true names or capacities of
7 these Defendants if and when the same have been determined.

8
9 **III. JURISDICTION AND VENUE**

10 6. This action seeks declaratory, equitable, and monetary relief against the named
11 Defendant MCDONOUGH, in his official capacity as Secretary of the United
12 States Department of Veterans Affairs for certain unlawful employment
13 discrimination against Allison Gill, based upon her disability, and in retaliation for
14 and opposition to her prior equal employment opportunity [“EEO”] activities, in
15 violation of the Rehabilitation Act of 1973, as amended 29 U.S.C. §791 et seq.,
16 and related Executive Order 13164.

17 7. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1331, 1343(4),
18 1346, 1361, 29 U.S.C. §794a and 42 U.S.C. §§2000e-5 and 2000e-16.

19 8. Venue is proper in this U.S. District Court for the Southern District of California
20 pursuant to 28 U.S.C. § 1391 and 42 U.S.C. §§2000e-5(f) in that County of San
21 Diego, California is where Plaintiff resides, and where a substantial part of the
22 events or omissions giving rise to all the actions complained of herein took place.

23
24 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

25 9. Plaintiff Gill exhausted all her administrative remedies and obtained a “right to
26 sue” letter from the Department of Veteran’s Affairs. The events described herein
27 constitute claims made by Plaintiff in her EEO Complaint and Appeal to the Final
28 Agency Decision.

1 10. First, Plaintiff filed a EEO Complaint Case No. 20DR-0010-2019104998 on
2 November 21, 2019. The Agency issued its Final Agency Decision [“FAD”] on
3 June 28, 2021.

4 11. Second, Plaintiff filed an Appeal No. 2021004344, filed on August 27, 2021, The
5 Office of Federal Operations [“OFO”] issued its final order affirming Agency’s
6 final decision on July 17, 2023.

7 12. Copies of Plaintiff’s “right to sue” letter and her EEO complaint are attached
8 hereto and incorporated herein as Exhibit A and Exhibit B.

9
10 **V. GENERAL ALLEGATIONS**

11 **1. FACTUAL ALLEGATIONS**

12 13. Plaintiff was hired at the VA in or around February 2009 as a G-5 Medical Support
13 Assistant.

14 14. Six months later, in or around August 2009, Plaintiff was promoted to GS-9 and
15 became the San Diego Call Center Supervisor.

16 15. In 2012, Plaintiff was promoted to GS-12 as the Outpatient Clinic Operations Chief
17 for the Los Angeles VA Health System.

18 16. In 2015, Plaintiff was hired as a GS-14 by the Office of Interagency Health Affairs
19 in DC (10P5) as the VA West Region TRICARE Liaison to the Department of
20 Defense.

21 17. Plaintiff received outstanding job performance reviews and was known for creating
22 a new system for achieving gains for minority representation in the VA.

23 18. In April 2019, Plaintiff learned that her position would be reassigned to
24 Washington, D.C. based on the pretextual, alleged need for “face-to-face”
25 communication.

26 19. Plaintiff informed her supervisors that she would decline a move to Washington,
27 D.C. due to her husband’s and mother’s health issues.

28 20. Plaintiff had been asked to apply for her retiring supervisor’s position in

1 Washington, D.C. in 2017, which she declined. This unequivocally signaled
2 Plaintiff's intent to remain in her current location. The individual responsible for
3 Plaintiff's termination and his supervisor were well aware of Plaintiff's prior refusal
4 of the promotion.

5 21. On or about April 3, 2019, the Agency formally notified Plaintiff that her position
6 was being reassigned to the Central Office in Washington, D.C. due to a functional
7 reorganization, effective October 1, 2019.

8 22. On or about June 12, 2019, the Agency issued decision to reassign Gill's position
9 to Washington, D.C. effective August 4, 2019, abruptly changing the previously
10 effective date of October 1, 2019.

11 23. In direct contradiction to their pretext of reorganization, an equivalent position
12 based out of Florida, was not required to relocate to the Central Office in
13 Washington, D.C.

14 24. Plaintiff did not accept the management-directed reassignment on June 24, 2019.

15 25. On November 21, 2019, Plaintiff filed an EEO complaint alleging that the Agency
16 subjected her to discrimination and a hostile work environment based on disability
17 (posttraumatic stress disorder ("PTSD")), and in reprisal for filing the instant EEO
18 complaint and requesting a reasonable accommodation when:

19 a. On July 26, 2019, the Agency denied Plaintiff's reasonable accommodation
20 request submitted on May 21, 2019, for 100% telework and instead granted
21 three days per week of telework.

22 b. On August 6, 2019, the Director told Plaintiff that he was conducting a fact-
23 finding inquiry, denied her request for representation, and accused her of
24 Family and Medical Leave Act ("FMLA") abuse.

25 c. On August 6, 2019, Plaintiff learned that the Director accessed her social
26 media accounts and obtained her videos and pictures.

27 d. On August 6, 2019, the Director granted Plaintiff 100% telework, temporarily
28 as an interim accommodation.

1 e. On August 9, 2019, Plaintiff's supervisor Patrick Grady indicated that the
2 100% telework was only in place for 90 days.

3 f. On August 15, 2019, the Director presented Plaintiff with another telework
4 agreement with restrictive conditions, such as returning instant messages
5 within ten minutes and answering telephone calls within five rings. Such
6 restrictive telework agreement was not given to any other counterparts until
7 after Plaintiff complained of its retaliatory nature.

8 g. On August 19, 2019, management delayed Plaintiff's request for leave
9 without pay ("LWOP").

10 h. On November 27, 2019, Plaintiff's accommodation request was closed, and
11 she was not reassigned.

12 26. At the conclusion of the investigation, the Agency provided Plaintiff with a copy
13 of the ROI and notice of her right to request a hearing before an EEOC
14 Administrative Judge.

15 27. Plaintiff timely requested a hearing but subsequently withdrew her request.

16 28. The timing of talks regarding Plaintiff's termination coincide around the release of
17 the Mueller Report on April 18, 2019. At that time, the Plaintiff had already started
18 a comprehensive 20-part series dissecting the findings of the Mueller Report on
19 her Mueller, She Wrote podcast, something that the Trump's administration has
20 demonstrably and desperately tried to hide.

21 29. On information and belief this coordinated effort to find the host of the podcast,
22 A.G., goes all the way to Defendants TRUMP and WILKIE, as what happened was
23 part of a larger conspiracy.

24 30. Consequently, the Agency issued its FAD pursuant to 29 C.F.R. §1614.110(b).

25 31. The Agency concluded that Plaintiff failed to prove that she was subjected to
26 discrimination as alleged.

27 32. Plaintiff filed the instant appeal and submitted a brief in support of her appeal.

28 33. The Agency opposed Complainant's appeal.

1 34. Office of Federal Operations (“OFO”) issued its final order affirming Agency’s
2 final decision on July 17, 2023.

3
4 **2. THE FIRST AMENDMENT RIGHTS OF FREE SPEECH AND**
5 **ASSOCIATION**

6 35. The First Amendment does not tolerate the suppression of speech based on what
7 some may label an unpopular viewpoint of the speaker. (Hurley v. Irish-Am. Gay,
8 Lesbian & Bisexual Grp. of Bos., 515 U.S. 557, 579 (1995) (“While the law is free
9 to promote all sorts of conduct in place of harmful behavior, it is not free to
10 interfere with speech for no better reason than promoting an approved message or
11 discouraging a disfavored one, however enlightened either purpose may strike the
12 government.”).)

13 36. Here, the Defendants sought to suppress speech that challenged and criticized their
14 actions and policies. Through their treatment of the Plaintiff, including retaliatory
15 measures and the fostering of a hostile work environment due to her politically
16 critical podcast about the administration, they unmistakably infringe upon her First
17 Amendment rights.

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37. As discovered through a Freedom Of Information Act request, Defendant WILKIE was aware of the Plaintiff’s Twitter account and podcast, as seen in this screenshot of the “VA Secretary's Stand-Up Brief30 October 2019” (highlighted for emphasis).

VA Secretary’s Stand-Up Brief30 October 2019

Social Media Takeaway Social media volume skyrocketed as posts on HVAC Republicans walking out of a hearing pertaining to Women Veterans dominated Twitter.

Key Points Seven of the top ten tweets were on the storyline of House Republicans “walking out” and “refusing to vote” on legislation regarding healthcare for female Veterans. 1. @GunReformRyan said of the House Republicans who walked out of the hearing, “They don’t care about women. They don’t care about vets. They don’t care about their constituents.” (8.7k+ retweets). 2. @votevets tagged #Shameful in its post (7.6k+ retweets). 3. @SpeakerPelosi praised @VetAffairsDems and criticized the, “poison pill amendments and GOP walkout” (5.3k+ retweets). 5. @ida skiben criticized Republicans for walking out and accusing a Purple Heart Veteran of being a spy (1.5k+ retweets). 7. @morethanmySLE called the walk-out “disgraceful” and quoted Chair Takano, “They have left these veterans behind.” (1.1k+ retweets). 8. @VetAffairsDems included the same quote by Chair Takano in its post (640+ retweets). 10. @AN_Goldstein lamented seeing the walk-out as a, “woman veteran, #MST survivor, and survivor of a sexual assault at VA” (260+ retweets). 4. @RedTRaccoon praised Rep. Joe Cunningham (D-S.C.), saying, “He got his VA Tele-Hearing Modernization Act to pass committee... Disabled, elderly, and rural veterans needed this badly” (3.2k+ retweets). 6. @ColMorrisDavis’s post tagging @DeptVetAffairs and commenting that, “@IngrahamAngle smears a combat decorated and wounded U.S. Army officer suggesting he’s a spy...” garnered an additional 940+ retweets (1.2k+ total). 9. @MuellerSheWrote posted about the claim that the OAWP, “has been shielding trump appointees from whistleblower and EEO complaints while also retaliating against complainants” (340+ retweets).

Twitter and Facebook Volume: 15 October – 29 October

Notable Social Media Items

Platform	Item	Relevance
Twitter	Topic: HVAC Republicans walk out of hearing	70% of Volume
Twitter	#Shameful	21% of Volume
Facebook	Honor Flight Maine hosts largest Vietnam veteran group to date	830+ Reactions, 180+ Shares

(21-02950-F) - 000803

38. Defendant TRUMP through one of his many companies, has also acknowledged Plaintiff and her anti-Trump activities in the Complaint filed in Trump Media & Technology Group Corp. v. WP Company LLC, Case 8:23-cv-01535-TPB-AAS, United States District Court Middle District Of Florida, ¶ 17: “As was naturally and foreseeably intended by WaPo and Wilkerson, the Statements were republished millions of times on May 13, 2023 and thereafter, including by prominent anti-TMTG Twitter users, see, e.g.: <https://twitter.com/MuellerSheWrote/status/1657865291794382848> (“HA! The

1 Russian tied to the bank that loaned Truth Social \$8M to stay afloat also donated
2 \$30K to Ron DeSantis, and the bank is the ‘#1 trusted payment service’ for the
3 porn industry. Oh, the tangled web they weave”).”

4 39. The First Amendment prohibits government retaliation for exercising one's right
5 to engage in protected speech or association. “To bring a First Amendment
6 retaliation claim, the plaintiff must allege that (1) it engaged in constitutionally
7 protected activity; (2) the defendant's actions would “chill a person of ordinary
8 firmness” from continuing to engage in the protected activity; and (3) the protected
9 activity was a substantial motivating factor in the defendant's conduct— i.e., that
10 there was a nexus between the defendant's actions and an intent to chill
11 speech.” Arizona Students’ Ass’n v. Arizona Bd. of Regents, 824 F.3d 858, 867
12 (9th Cir. 2016).

13 40. Here, the Plaintiff unmistakably engaged in constitutionally protected activity
14 when she ran her political podcast, expressing dissenting views critical of the
15 administration. Her podcast was a manifestation of her constitutionally protected
16 right to free speech and political expression. The actions taken against her,
17 including retaliation and the creation of a hostile work environment, were clearly
18 designed to discourage her from continuing to exercise her protected speech, thus
19 violating the First Amendment’s prohibition against government retaliation for
20 engaging in such protected activities. Further, Plaintiff had used a pseudonym from
21 day one of the podcast in an effort to not violate the Hatch Act.

22 41. To prevail on a First Amendment Retaliation claim, a plaintiff need only show that
23 the defendant “intended to interfere” with the plaintiff's First Amendment rights;
24 the plaintiff is not required to demonstrate that “his speech was actually suppressed
25 or inhibited”. (Mendocino Env'tl. Ctr. v. Mendocino County, 192 F.3d 1283, 1300
26 (9th Cir. 1999).)

27 42. Plaintiff will demonstrate that the Defendants intended to interfere with her First
28 Amendment rights by taking various actions, such as directed reassignment, the

1 absence of substantially similar job opportunities, and undue delays in processing
2 her reasonable accommodation request. Additionally, they engaged in a retaliatory
3 "fact-finding" mission concerning her personal activities in an effort to establish
4 abuse of her Family and Medical Leave Act ("FMLA") leave. These actions were
5 all taken in direct response to her political podcast, which expressed critical views
6 of the administration. The Plaintiff has also experienced tangible harm as a result
7 of these actions, including the hostile work environment and the obstacles placed
8 in her path within the organization. Crucially, Plaintiff has fulfilled the
9 requirements set by the legal precedent by showing that the Defendants intended
10 to interfere with her First Amendment rights and that she suffered injury as a result,
11 making her First Amendment Retaliation claim viable.

12
13 **FIRST CAUSE OF ACTION**

14 **DISABILITY DISCRIMINATION**

15 **(Against all Defendants)**

16 43. Plaintiff hereby repeats, realleges, and incorporates by this reference each and
17 every allegation from each and every paragraph before and after this paragraph, as
18 though said paragraphs were set forth in full herein.

19 44. The Rehabilitation Act of 1973, sections 501 and 504, as amended, makes it
20 unlawful for a federal employer to discriminate against an employee on the basis
21 of disability. A person is also protected from disability discrimination if they have
22 a record of having such a condition or if they are viewed as having that condition
23 by others. 29 U.S.C. §§ 791 et seq.

24 45. The term "disability" means, with respect to an individual, a physical or mental
25 impairment that substantially limits one or more major life activities of such
26 individual. Major life activities include but are not limited to...working. 42 U.S.C
27 §§ 12102 (1)A and 12102 (2)(A).

28 46. At the time the events described herein occurred, Plaintiff was an employee of the

1 Defendant Department of Veterans Affairs.

2 47. Defendants knew Plaintiff had a disability that limited Plaintiff's major life
3 activities including, but not limited to Plaintiff's ability to work.

4 48. Plaintiff was able to perform the essential job duties of her position with reasonable
5 accommodation for her disability. This reasonable accommodation included
6 Defendants providing Plaintiff with a telework option.

7 49. Plaintiff was a "qualified individual" with a disability under the Rehabilitation Act.

8 50. Plaintiff was subjected to adverse employment actions.

9 51. Plaintiff's disability and/or medical condition was a motivating reason for the
10 adverse employment actions taken against Plaintiff by Defendants.

11 52. Plaintiff was harmed.

12 53. These adverse employment actions were a substantial factor in causing Plaintiff's
13 harm.

14 54. Plaintiff is informed and believes and based thereon alleges that the outrages
15 conduct of said Defendants, described above, was done with malice by Plaintiff's
16 supervisors and was ratified by the actions of the other individuals who were
17 managing agents of said Defendants. These unlawful acts were further ratified by
18 the Defendants as they were made aware of the continuing harm and consciously
19 disregarded Plaintiff's rights with the intent, design, and purpose of injuring
20 Plaintiff.

21 55. WHEREFORE, Plaintiff requests relief as hereafter provided.

22
23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REASONABLE ACCOMODATION**

25 **(Against all Defendants)**

26 56. Plaintiff hereby repeats, realleges, and incorporates by this reference each and
27 every allegation from each and every paragraph before and after this paragraph, as
28 though said paragraphs were set forth in full herein.

1 57. Plaintiff is an individual with a disability under the Rehabilitation Act.

2 58. Plaintiff suffers from PTSD, Panic Disorder, and Major Depressive Disorder.

3 59. Plaintiff was experiencing panic attacks in the workplace which were interfering
4 with her ability to think, concentrate, and communicate among other things.

5 60. Plaintiff was denied reasonable accommodation for her disability, and other
6 adverse employment actions.

7 61. The office environment was triggering and exacerbating her condition.

8 62. Plaintiff's provider recommended full-time telework.

9 63. Plaintiff could perform all her essential functions of her job with the 100%
10 telework.

11 64. In the months following Plaintiff's termination, all of her coworkers transitioned
12 to telework due to COVID-related restrictions, providing clear evidence that 100%
13 telework was indeed viable.

14 65. The Agency denied reasonable accommodation despite the initial mandate that
15 Plaintiff's job had to be based in Washington, D.C. due to the need for in-person
16 interactions, the Agency subsequently demanded that Plaintiff worked in-person at
17 their San Diego office. This is in direct contradiction to Agency's primary
18 justification for relocating the Plaintiff's position to D.C., while subsequently
19 denying the Plaintiff's request for remote work in San Diego, citing the same
20 imperative for in-person presence.

21 66. Furthermore, the Agency's denial of the accommodation was unreasonably
22 delayed.

23 67. In this case, Plaintiff lost wages, benefits, and sick pay for her extended LWOP.
24 She would not have suffered those losses if her request for telework had been
25 facilitated.

26 68. WHEREFORE, Plaintiff requests relief as hereafter provided.

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THIRD CAUSE OF ACTION

FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS

(Against all Defendants)

69. Plaintiff hereby repeats, realleges, and incorporates by this reference each and every allegation from each and every paragraph before and after this paragraph, as though said paragraphs were set forth in full herein.

70. Plaintiff had at least one disability that limited his major life activities.

71. Plaintiff's disability status was made known to Defendants by Plaintiff.

72. Plaintiff requested a reasonable accommodation for her worsening disability through her doctor such that Plaintiff would be able to perform the essential job requirements.

73. Defendants failed to provide the requested reasonable accommodation of the known disability and/or medical condition of Plaintiff in violation of the Rehabilitation Act, Defendants refused to provide Plaintiff with full-time telework accommodation.

74. Plaintiff was willing to participate in an interactive process to determine whether reasonable accommodation could be made so that she would be able to perform the essential requirements of her job.

75. Defendants failed to participate in a timely, good-faith interactive process with Plaintiff to determine whether reasonable accommodation could be made, but rather were working to find ways and reasons to remove the Plaintiff from her employment.

76. Plaintiff was harmed.

77. Defendants' failure to participate in a good-faith interactive process was a substantial factor in causing harm to Plaintiff.

78. WHEREFORE, Plaintiff requests relief as hereafter provided.

FOURTH CAUSE OF ACTION

RETALIATION

(Against all Defendants)

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4 79. Plaintiff hereby repeats, realleges, and incorporates by this reference each and
5 every allegation from each and every paragraph before and after this paragraph, as
6 though said paragraphs were set forth in full herein.

7 80. Plaintiff filed repeated complaints involving her disability discrimination against
8 Defendants that were not only ignored but led to Plaintiff being subject to the
9 retaliatory “fact-finding” regarding her conduct, denied her representation, and
10 accused her of abusing FMLA leave. Defendants unlawfully retaliated against
11 Plaintiff when she exercised her right and filed an EEO Complaint addressing the
12 disability discrimination in her workplace.

13 81. Plaintiff was also assigned retaliatory work assignments, such as developing a
14 spreadsheet of all the Agency contracted nursing homes in the US, complete with
15 phone numbers, addresses, and contacts. Notably, all this information was readily
16 accessible on the VA interactive website.

17 82. Plaintiff was also subject to unduly harsh and restrictive telework rules in
18 retaliation for her disability discrimination complaints.

19 83. As a direct, foreseeable, and proximate result of Defendant’s unlawful actions,
20 Plaintiff has suffered substantial mental and emotional distress, embarrassment,
21 and overall discomfort.

22 84. Defendants committed the acts herein with malice against Plaintiff with the
23 wrongful intention of injuring Plaintiff with conscious disregard to her health,
24 safety, and rights.

25 85. WHEREFORE, Plaintiff requests relief as hereafter provided.

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FIFTH CAUSE OF ACTION

HOSTILE WORK ENVIRONMENT

(Against all Defendants)

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4 86. Plaintiff hereby repeats, realleges, and incorporates by this reference each and
5 every allegation from each and every paragraph before and after this paragraph, as
6 though said paragraphs were set forth in full herein.

7 87. Defendants harassed the Plaintiff because of her disability and her requests for
8 accommodation.

9 88. Plaintiff is a qualified individual with a disability under the Rehabilitation Act.

10 89. Plaintiff was subject to numerous adverse and harassing actions that centered
11 around her disability and the leave she took because of her disability.

12 90. On at least two separate occasions, members of the Plaintiff's chain of command
13 made jokes about her PTSD during meetings, belittling the condition to such an
14 extent that Plaintiff had to request her then-supervisor to intervene and request that
15 they cease such conduct.

16 91. The Agency unreasonably denied Plaintiff's requests for accommodation and only
17 granted her partial telework.

18 92. The Agency targeted the Plaintiff before she even returned from FMLA leave and
19 had determined that she would be removed and charged with misconduct prior to
20 any investigation.

21 93. The Agency harassed the Plaintiff by attempting to impose unduly harsh and
22 restrictive telework rules.

23 94. The Agency was harassing the Plaintiff throughout the accommodation process
24 and regarding her leave requests, by such the Agency directly impacted her
25 working conditions.

26 95. Suddenly placing new restrictions on the Plaintiff or changing Plaintiff's status was
27 particularly offensive given the nature of Plaintiff's condition.

28 96. This harassing conduct exacerbated Plaintiff's condition to the point where she was

1 no longer able to work in her position.

2 97. The VA increased her disability rating from 70% to 100%.

3 98. The Agency’s harassment practices culminated in tangible employment actions
4 and were sufficiently severe or pervasive to create a hostile work environment.

5 99. WHEREFORE, Plaintiff requests relief as hereafter provided.

6
7 **SIXTH CAUSE OF ACTION**

8 **RETALIATION FOR PROTECTED SPEECH AND ASSOCIATION UNDER**
9 **U.S. CONST., AMEND. I, 42 U.S.C. § 1983**

10 **(Against ROBERT WILKIE, DONALD J. TRUMP, and DOES 1 - 50)**

11 100. Plaintiff hereby repeats, realleges, and incorporates by this reference each and
12 every allegation from each and every paragraph before and after this paragraph, as
13 though said paragraphs were set forth in full.

14 101. Plaintiff is informed and believes and thereupon alleges that defendants, and each
15 of them, violated her constitutional rights as described in this Complaint, by
16 retaliating against her, in retaliation for and as prior restraint of protected speech
17 regarding matters of public importance, most notably her involvement in the
18 political podcast “Mueller, She Wrote” and her Twitter account of the same name.

19 102. Plaintiff is informed and believes and thereupon alleges that Defendants WILKIE
20 and TRUMP, violated her constitutional rights as described in this Complaint
21 because of customs, policies, directives, practices, acts and omissions of authorized
22 individuals. These customs, policies, directives, practices, acts and omissions
23 included, but were not limited to, the maintenance of employment practices that
24 allow for retaliatory actions for and prior restraint of protected speech and the
25 maintenance of employment practices that encourage retaliation against and prior
26 restraint of an employee for protected speech. These customs, policies, directives,
27 practices, acts and omissions constitute gross negligence and/or deliberate
28 indifference on the part of the Agency in its obligation to ensure the preservation

1 of an employee's constitutional rights.

2 103. The retaliatory conduct against Plaintiff, including but not limited to the retaliation
3 for her protected speech and following adverse discriminatory employment
4 actions, was a deliberate choice of action made from among various alternatives
5 by the Defendants.

6 104. As a direct, foreseeable, and proximate result of Defendants' acts and omissions,
7 Plaintiff has suffered substantial losses in earnings, and has suffered
8 discrimination, mental and emotional distress, and discomfort, all to Plaintiff's
9 damage in the precise amount of which will be proven at trial.

10 105. To bring a successful First Amendment retaliation claim, the plaintiff must allege
11 that (1) it engaged in constitutionally protected activity; (2) the defendant's actions
12 would 'chill a person of ordinary firmness' from continuing to engage in the
13 protected activity; and (3) the protected activity was a substantial or motivating
14 factor in the defendant's conduct. (Arizona Students' Ass'n v. Arizona Bd. of
15 Regents, 824 F.3d 858, 867 (9th Cir. 2016) [quoting O'Brien v. Welty, 818 F.3d
16 920, 932 (9th Cir. 2016).].)

17 106. Further, to prevail on such a claim, a plaintiff need only show that the defendant
18 'intended to interfere' with the plaintiff's First Amendment rights; the plaintiff is
19 not required to demonstrate that "his speech was actually inhibited or suppressed".
20 (Mendocino Env't Ctr. v. Mendocino Cnty., 192 F.3d 1288, 1300 (9th Cir. 1999).)

21 107. Plaintiff engaged in constitutionally protected activity.

22 108. Plaintiff spoke as a private citizen and not as a part of her official duties as a public
23 employee.

24 109. The retaliation plaintiff must show an "adverse employment action," defined as a
25 "materially adverse change in the terms and conditions" of employment.
26 (Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53, 53 (2006).)

27 110. Starting with the Plaintiff's directed reassignment, continuing through failures to
28 accommodate and engage in a timely interactive process, and culminating in the

1 imposition of overly restrictive teleworking conditions following the initiation of
2 the fact-finding process, all of these actions collectively constitute adverse
3 employment actions in retaliation against the Plaintiff's protected activity.

4 111. The Defendants' harassing and retaliatory employment actions had an objectively
5 chilling effect on engaging in the protected activity.

6 112. Plaintiff's opposing political views, as expressed in her podcasting activity, were
7 a substantial motivating factor in the Defendants' retaliatory conduct.

8 113. There is a clear nexus between the Defendants' lack of accommodation,
9 discrimination, and other retaliatory actions and Defendants' intent to chill
10 Plaintiffs' speech.

11 114. As a direct and proximate result of Defendants' actions, Plaintiff has suffered an
12 irreparable injury for which there is not adequate remedy at law.

13
14 **SEVENTH CAUSE OF ACTION**

15 **CONSPIRACY**

16 **(Against ROBERT WILKIE, DONALD J. TRUMP, and DOES 1-50)**

17 115. Plaintiff hereby repeats, realleges, and incorporates by this reference each and
18 every allegation from each and every paragraph before and after this paragraph, as
19 though said paragraphs were set forth in full.

20 116. A conspiracy is an agreement by two or more persons to commit a wrongful act
21 for the purpose of harming another.

22 117. Plaintiff was harmed by DOES 1-50 and WILKIE'S retaliatory employment efforts
23 and TRUMP is responsible for the harm because he was part of the conspiracy to
24 commit retaliation for protected speech, and protected activities.

25 118. TRUMP was aware that WILKIE and DOES 1-50 planned to retaliate for protected
26 speech.

27 119. TRUMP agreed with WILKIE and DOES 1-50 and intended that the retaliation for
28 protected speech be committed.

1 120. All of the employment actions described above were pretextual move on the part
2 of the Defendants to deprive Plaintiff of her civil rights.

3
4 **VI. PRAYER FOR RELIEF**

5 121. Plaintiff prays this Honorable Court to declare and adjudge that Defendants'
6 conduct alleged herein constitutes unlawful discrimination based on disability
7 and/or retaliation for Plaintiff's protected activity of filing administrative EEO
8 discrimination claims and opposing discrimination; and that Defendants violated
9 Plaintiff's First Amendment Rights by retaliating for Plaintiff's free speech; and
10 further that Defendants subjected Plaintiff to a hostile work environment by such
11 actions, for which Plaintiff suffered damages.

12
13 WHEREFORE, Plaintiff prays for Judgment against Defendant as follows:

- 14 A. To declare Defendants' actions unlawful;
- 15 B. Order that the Defendants pay Plaintiff compensatory damages, including but
16 not limited to, lost back pay and benefits plus interest, according to proof;
- 17 C. For general and special damages;
- 18 D. For punitive damages, as allowed by law, that will sufficiently punish, make
19 and example of, and deter future conduct by Defendants;
- 20 E. Order that the Defendants pay the Plaintiff's attorney fees and costs of this
21 litigation, related litigation and of the preceding administrative actions at the
22 Agency level;
- 23 F. For an award of pre-judgment and post-judgment interest; and
- 24 G. For such other and further relief as the Court deems just and proper.

25 ///

26 ///

27 ///

VII. JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: October 17, 2023

By: /s/ Ethan Bearman
Ethan Bearman, Esq.,
Attorney for Plaintiff

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JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Allison M. Gill

(b) County of Residence of First Listed Plaintiff San Diego, California
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
The Bearman Firm, Inc., 9460 Wilshire Blvd, Suite 830,
Beverly Hills, CA, 90212, (747)232-7626

DEFENDANTS

DENIS R. MCDONOUGH, Secretary, United States
Department of Veterans Affairs; ROBERT L. WILKIE, an

County of Residence of First Listed Defendant District of Columbia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'23CV1892 LAB MSB

United States Attorney General

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability		INTELLECTUAL PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	LABOR	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	IMMIGRATION	FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations			<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	<input checked="" type="checkbox"/> 445 Amer. w/Disabilities - Employment	PRISONER PETITIONS		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 463 Alien Detainee		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 510 Motions to Vacate Sentence		
		<input type="checkbox"/> 530 General		
		<input type="checkbox"/> 535 Death Penalty		
		Other:		
		<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. §791

Brief description of cause:

Unlawful employment discrimination based upon Plaintiff disability, and in retaliation for and opposition to Plaintiff prior equal employment opportunity

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

October 16, 2023

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

TABLE OF CONTENTS

EXHIBITS

1. **Exhibit A:** U.S. EEOC OFO Decision from 2023.07.17, Containing Provision
9 pages “Right to Request Counsel” (Z0815)
2. **Exhibit B:** Gill’s Complaint of Employment Discrimination
5 pages

EXHIBIT A



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

Allison Gill a/k/a
[REDACTED]¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2021004344

Hearing No. 480-2020-00639X

Agency No. 20DR-0010-2019104998

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 June 28, 2021 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Health Systems Specialist at the Agency's Medical Center in San Diego, California. In April 2019, Complainant learned that her position would be reassigned to Washington, D.C. based on the need for face-to-face communication. Complainant informed her supervisors that she would decline a move to Washington, D.C. due to her husband's and mother's health issues. On or about June 12, 2019, the Agency formally notified Complainant that her position was being reassigned to the Central Office in Washington, D.C. due to a functional reorganization, effective August 4, 2019. Complainant did not accept the management-directed reassignment. Report of Investigation (ROI) at 165, 217-18.

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.

On November 21, 2019, Complainant filed an EEO complaint alleging that the Agency subjected her to discrimination and a hostile work environment based on disability (posttraumatic stress disorder (PTSD)), and in reprisal for filing the instant EEO complaint and requesting a reasonable accommodation, when:

1. on July 26, 2019, the Agency denied Complainant's reasonable accommodation request submitted on May 21, 2019, for 100% telework, and it granted three days of telework instead;
2. on August 6, 2019, the Director told Complainant that he was conducting a fact-finding inquiry; denied her request for representation; and accused her of Family and Medical Leave Act (FMLA) abuse;
3. on August 6, 2019, Complainant learned that the Director accessed her social media accounts and obtained her videos and pictures;
4. on August 9, 2019, the Director granted Complainant 100% telework, temporarily for 90 days as an interim accommodation;
5. on August 15, 2019, the Director presented Complainant with another telework agreement with restrictive conditions, such as returning instant messages within ten minutes and answering telephone calls within five rings;
6. on August 19, 2019, management delayed Complainant's request for leave without pay (LWOP); and
7. on November 27, 2019, Complainant's accommodation request was closed, and she was not reassigned.²

At the conclusion of the investigation, the Agency provided Complainant with a copy of the ROI and notice of her right to request a hearing before an EEOC Administrative Judge. Complainant timely requested a hearing but subsequently withdrew her request. Consequently, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency concluded that Complainant failed to prove that she was subjected to discrimination as alleged.

Complainant filed the instant appeal and submitted a brief in support of her appeal. The Agency opposed Complainant's appeal.

ANALYSIS AND FINDINGS

Standard of Review

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 Chap. 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

² On March 19, 2020, the Agency issued Complainant a decision to remove her, effective March 25, 2020. ROI at 464-5. Complainant's removal is not an issue in the instant EEO complaint.

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”).

Claims

Through her attorney, Complainant contends that the Agency did not properly frame her claims when it accepted claims 1, 4, 5, 6, and 7 as discrete claims. While the Agency stated in the final decision that the wording was substantially similar to Complainant’s wording, Complainant disputes that her claims were framed properly, and she requests that her claims be framed as: (1) a failure to accommodate and properly engage in the interactive process; and (2) a hostile work environment. However, a review of the Agency’s final decision shows that it properly analyzed Complainant’s allegations of a denial of a reasonable accommodation; disparate treatment; and a hostile work environment. As such, we decline to change the framing of Complainant’s claims on appeal.

Reasonable Accommodation (Claims 1, 4, 5, and 7)

In order to establish that Complainant was denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability; (2) she is a qualified individual with a disability; 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 Notice No. 915.002 (Oct. 17, 2002) (Enforcement Guidance). “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). An agency is required to make reasonable accommodation to the known physical and mental limitations of a qualified individual with a disability unless the Agency can show that accommodation would cause an undue hardship. See 29 C.F.R. §§ 1630.2(o), (p).

The Agency disputes that Complainant is a qualified individual with a disability. We will assume, for the purpose of analysis and without so finding, that Complainant is a qualified individual with a disability. Complainant initiated the reasonable accommodation process on April 29, 2019, when she requested fulltime telework, and she submitted medical documentation on May 22, 2019. ROI at 328, 165.

On July 26, 2019, the Agency informed Complainant that a review of the essential functions revealed that her position required face-to-face interactions to build effective relationships and to provide training, and it denied her request for fulltime telework (claim 1). Instead, the Agency offered three days of telework per week and notified Complainant that if she was unwilling to accept anything less than 100% telework, it was prepared to consider a reassignment search for positions with duties that can be performed while on 100% telework. ROI at 222, 225-6.

On appeal, Complainant disputes that Complainant's physical presence was an essential function of her position. However, we find that the Agency accommodated Complainant when it continuously granted her requests for FMLA and LWOP, or allowed her to telework, since May 9, 2019. Unpaid leave is a form of reasonable accommodation, whether or not provided under the FMLA. See Enforcement Guidance, at questions 16-21, 28.

Complainant was initially approved for FMLA leave from May 9, 2019, through June 14, 2019, due to her incapacitation, and it was extended through August 16, 2019. ROI at 535, 527. Complainant returned to work on August 5, 2019. ROI at 163. On or about August 9, 2019, the Agency issued a decision to grant fulltime telework through November 23, 2019, on an interim basis to give the Agency time to explore the possibility of a reassignment (claim 4). ROI at 257. However, on August 19, 2019, Complainant requested LWOP, starting the following day, and the record shows that Complainant remained on LWOP until January 31, 2020.³ ROI at 390-2, 402-28.

The Rehabilitation Act provides that qualified individuals with a disability be granted an effective reasonable accommodation, but it does not entitle them to the accommodation of their choice. See Castaneda v. U.S. Postal Serv., EEOC Appeal No. 01931005 (Feb. 17, 1994); see also Enforcement Guidance at Question 9. In this case, while the Agency did not grant Complainant's preferred accommodation of fulltime telework until August 9, 2019, there is no evidence that the Agency denied her requests for FMLA leave or LWOP. ROI at 257.

Further, we find that the record does not support that fulltime telework was an effective accommodation. The record shows that Complainant teleworked fulltime from August 5-16, 2019. ROI at 395. However, Complainant submitted her request for LWOP on August 19, 2019. Despite giving Complainant her preferred accommodation of fulltime telework, she needed a different accommodation of LWOP, which the Agency granted.

In addition, Complainant had issues with her availability while teleworking, and the Director issued additional guidance with Complainant's approval to fulltime telework (claim 5), in an effort to manage her ability to work while teleworking. For example, Complainant was instructed to respond to instant messages within ten minutes and answer telephone calls by five rings. The Director informed Complainant that the requirements were to ensure that she was available during core hours and to meet clients' needs. When Complainant informed the Director that the restrictions aggravated her medical condition, he immediately withdrew them. The Director also stated that he provided the same telework guidance to all Medical Sharing Office employees. ROI at 185-6, 193, 267.

³ The records end on January 31, 2020, but there is no indication that the Agency denied LWOP until Complainant's removal on March 25, 2020.

On appeal, Complainant argues that the restrictions were “obviously created for [Complainant] and only sent out to others after [she] alleged they were discriminatory.” Complainant Appeal Brief at 19. However, Complainant cites to no evidence, and she only offers speculation. Further, the record shows that the Director previously informed a Human Resources Specialist and the Acting Executive Director of his concerns related to Complainant’s ability to work while on a telework status. Complainant did not call into a staff meeting on May 9, 2019, and when the Director called her, she responded that her Wi-Fi was out and that she should have come into the office. Complainant also admitted that she had not seen the Director’s email on her government-issued cellphone, and he advised her to use it to stay online. ROI at 368, 370. The record also confirms that the Director emailed the same instructions to the other employees ROI at 261-2.

The Agency conducted a reassignment search for ninety days and it administratively closed her reasonable accommodation request after it was unable to find a position (claim 7). ROI at 205-6. On August 22, 2019, Complainant’s Clinical Psychologist provided that, given Complainant’s military-related trauma, her Agency and Department of Defense-related work and situation were direct triggers of her trauma, and on September 18, 2019, he recommended that she remove herself from triggering situations, such as her military-related employment.⁴ ROI at 283. Complainant also informed the Agency that she would only accept a position that was within her geographic area of San Diego and at her same grade level (GS-14), and the search was limited to Complainant’s medical restrictions and search parameters. ROI at 283, 230-1. We find that the Agency fulfilled its obligation under the Rehabilitation Act with its reassignment search of a suitable non-military-related position for Complainant within the Department of Veterans Affairs.

To the extent that Complainant contends that the Agency unreasonably delayed her accommodation that she requested on April 29, 2019, the Agency officially granted her an alternative accommodation of FMLA leave on May 23, 2019, soon after she submitted her FMLA forms on May 22, 2019. ROI at 520. The Agency also quickly approved Complainant’s provisional FMLA request on May 9, 2019, prior to receiving her supporting medical documentation. ROI at 522. As such, we find that there was no unreasonable delay in accommodating Complainant, and that she did not establish that the Agency failed to provide a reasonable accommodation.

Disparate Treatment (Claims 2, 3, and 6)

To prevail in a disparate treatment claim such as this, Complainant must satisfy the three-part evidentiary scheme fashioned by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). She must generally establish a prima facie case by demonstrating that she was subjected to an adverse employment action under circumstances that would support an inference of discrimination. Furnco Constr. Co. v. Waters, 438 U.S. 567, 576 (1978).

⁴ The evidence suggests that Complainant provided additional medical documentation to the Agency, but she only submitted the September 18, 2019 medical document for the ROI, and the August 22, 2019 document with her request to withdraw her hearing request.

The prima facie inquiry may be dispensed with in this case, however, since the Agency has articulated legitimate and nondiscriminatory reasons for its conduct. See U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 713-17 (1983); Holley v. Dep't of Veterans Affairs, EEOC Request No. 05950842 (Nov. 13, 1997). To ultimately prevail, Complainant must prove, by a preponderance of the evidence, that the Agency's explanation is a pretext for discrimination. Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000); St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 519 (1993); Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 (1981); Holley, *supra*; Pavelka v. Dep't of the Navy, EEOC Request No. 05950351 (Dec. 14, 1995).

Assuming, arguendo, that Complainant established a prima facie case of discrimination based on disability, and in reprisal for protected EEO activity, we find that the Agency proffered legitimate, nondiscriminatory reasons for claims 2, 3, and 6. For claims 2 and 3, the Director explained that an employee informed him about a website involving a podcast that Complainant hosted. When the Director conducted an internet search, he found the podcast's website, with associated social media sites, containing information that appeared to directly conflict with Complainant's medical restrictions. For example, Complainant provided in her FMLA documentation that she was unable to have face-to-face interactions or hold conversations, or to interact with others in a meaningful way. However, the publicly available information showed Complainant at an out-of-town event in June on stage, leading a song/chant. The Director was advised that he should conduct a fact-finding session to explore the possible conflict. ROI at 183, 303-4.

During the fact-finding, Complainant confirmed that it was her in the pictures and videos, and she explained that the tour related to the podcast did not exacerbate her PTSD since they were not linked to her trauma. ROI at 311-17. The Director noted that Complainant was not a bargaining unit employee, and he was informed that she was not entitled to an attorney or representative during the fact-finding meeting. The Director added that he accepted Complainant's explanation, and he did not pursue the matter any further. ROI at 183, 189.

For claim 6, the Director denied any delay for Complainant's LWOP request, which was submitted on August 19, 2019, and began on August 20th. ROI at 188.

We find that Complainant has not shown that the proffered reasons were pretexts for discrimination. Pretext can be demonstrated by showing such weaknesses, inconsistencies, or contradictions in the Agency's proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence. See Opare-Addo v. U.S. Postal Serv., EEOC Appeal No. 0120060802 (Nov. 20, 2007) (finding that the agency's explanations were confusing, contradictory, and lacking credibility, which were then successfully rebutted by the complainant), request for recon. denied, EEOC Request No. 0520080211 (May 30, 2008).

On appeal, Complainant asserts that she had been hosting the podcast for some time but that the Agency only chose to investigate her conduct after she requested FMLA leave and a reasonable accommodation.

However, the record shows that the Director only learned of Complainant's podcast activities on June 12, 2019, and he immediately contacted Human Resources for guidance. ROI at 183, 594-5. Complainant offers no contradictory evidence or any proof showing that the fact-finding was in retaliation for her protected EEO activity.

We find that Complainant did not cite to any evidence to show that the Agency's explanations were not worthy of belief. Rather, the record supports the reasons, such as the email informing the Director that there is no employee right to an attorney or representative for routine communications with a subordinate, including non-bargaining unit fact-finding meetings, and the Director's email approving Complainant's request for LWOP on August 20, 2019. ROI at 318, 265. Accordingly, we find that Complainant did not establish that the Agency discriminated against her based on her disability, or in reprisal for prior protected EEO activity, for claims 2, 3, or 6.

Harassment

As discussed above, we found that Complainant did not establish a case of discrimination on any of her alleged bases. Further, we conclude that a case of harassment is precluded based on our finding that Complainant did not establish that any of the actions taken by the Agency were motivated by her protected bases. See Oakley v. U.S. Postal Serv., EEOC Appeal No. 01982923 (Sept. 21, 2000). Accordingly, we find that Complainant did not show that the Agency subjected her to harassment based on her disability, or in reprisal for prior protected EEO activity.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final decision finding that Complainant did not establish discrimination as alleged.

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 (S0610)


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 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


July 17, 2023

Date

EXHIBIT B

OMB NO.: 2900-0718
 EXPIRATION DATE: DEC 31, 2019
 RESPONDENT BURDEN: 30 Min.

COMPLAINT CASE NUMBER:

 Department of Veterans Affairs		COMPLAINT OF EMPLOYMENT DISCRIMINATION	
<i>Read the instructions on the reverse side of this form carefully before completing the front of this form.</i>			
1. NAME (Last, first, middle initial) (Please print) Allison Gill		3. MAILING ADDRESS [REDACTED] San Diego, CA 92104	
2. EMAIL ADDRESS [REDACTED]		4a. WORK TELEPHONE NUMBER (Include Area Code) 619 [REDACTED]	
5. ARE YOU: <input checked="" type="checkbox"/> A VA EMPLOYEE <input type="checkbox"/> AN APPLICANT FOR EMPLOYMENT <input type="checkbox"/> A FORMER VA EMPLOYEE		6a. JOB TITLE, SERIES AND GRADE Heath Systems Specialist, GS-0671-14 6b. SERVICE/SECTION/PRODUCT LINE Medical Sharing Office 10P5	
7. NAME AND ADDRESS OF VA FACILITY WHERE DISCRIMINATION OCCURRED VA/DoD Medical Sharing Office 1575 I St. NW Rm 622 Washington DC 20420			
NOTE: For each employment related matter that you believe was discriminatory you must list the bases (list one or more of the following): Race (Specify), Color (Specify), Religion (Specify), Sex (Male or Female), National Origin (Specify), Age (Provide date of birth), Disability (Specify), Genetic Information (including family medical history), and/or Reprisal for participating in the EEO process or opposing unlawful discrimination.			
8. BASIS Disability and Reprisal		9. CLAIM(S) (What employment related claim(s) - personnel action(s), incident(s), or event(s) caused you to file this complaint? Briefly state the specific claim, personnel action and/or event that caused you to file this complaint. Use an additional sheet of paper if necessary. You should not include information that violates the Privacy Act of 1974 and the Health Insurance Portability and Accountability Act (HIPAA). Some examples are patient medical records, personal records of other VA-employees, etc.) See attached	
		10. DATE OF OCCURRENCE (Include the most recent date(s)) August 6, 2019 to the present	
11. REMEDIES SOUGHT (Use an additional sheet of paper if necessary.) See attached			
12a. DO YOU HAVE A REPRESENTATIVE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		12c. PROVIDE THE NAME AND ADDRESS OF YOUR REPRESENTATIVE Cathy Harris and Kerrie Riggs Kator, Parks, Weiser & Harris, PLLC [REDACTED] Washington, DC 20036	
12b. IF "YES," IS HE OR SHE AN ATTORNEY? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		12d. TELEPHONE NUMBER (Include Area Code) 202 [REDACTED]	
13a. HAVE YOU CONTACTED AN EEO COUNSELOR? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		13b. NAME OF EEO COUNSELOR Claudia Mendez	
		13c. DATE OF INITIAL CONTACT WITH ORM 8/6/2019	
14. If you contacted an EEO Counselor more than 45 calendar days after the Date(s) of Occurrence, listed in item 10, or if this complaint is filed more than 15 calendar days after receipt of a Notice of Right to File a Discrimination Complaint, you must explain why you were untimely in seeking EEO counseling or untimely in filing a complaint. (Use an additional sheet of paper, if necessary.)			
15a. HAVE YOU FILED A UNION GRIEVANCE ON ANY CLAIM(S) LISTED ABOVE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		15b. IF "YES," LIST THE CLAIM(S) AND DATE GRIEVANCE FILED	
		16a. HAVE YOU FILED AN APPEAL WITH THE MERIT SYSTEM PROTECTION BOARD (MSPB) ON ANY OF THE CLAIMS LISTED ABOVE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
16b. IF "YES," LIST THE ISSUE(S) AND DATE MSPB APPEAL FILED.			
17a. HAVE YOU FILED THIS COMPLAINT WITH ANYONE ELSE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		17b. IF "YES," PROVIDE THE NAME AND ADDRESS	
18. SIGNATURE OF COMPLAINANT (Sign in ink. Do not print) Allison Gill by Cathy Harris, Representative			18. DATE 11/21/19

VA FORM 4939 MAR 2017

SUPERSEDES VA FORM 4939, MAR 2013, WHICH SHOULD NOT BE USED.

COMPLAINT OF EMPLOYMENT DISCRIMINATION INSTRUCTIONS

Read the following instructions carefully before you complete this form. Please complete all items on the complaint form.

GENERAL: Pursuant to the Equal Employment Opportunity Commission (EEOC) Title 29 Code of Federal Regulations (29 C.F.R.) §1614, VA Form 4939, Complaint of Employment Discrimination, can be used by VA employees, former employees and applicants for employment who file a formal Equal Employment Opportunity (EEO) complaint of discrimination. This regulation prohibits discrimination based on race, color, religion, gender (sex), national origin, age (40 years and over), physical or mental disability, genetic information (including family medical history), and/or reprisal for participating in the EEO process or opposing unlawful discrimination.

You can obtain assistance from your EEO Counselor in filling out this form. Your EEO Counselor can also answer any questions you may have about this form. In item 8, you should specify the basis of your complaint: race, color, religion, gender (sex), national origin, age (*date of birth*), physical or mental disability (*specific information about your disability*), genetic information (including family medical history), and/or reprisal for participating in the EEO process or opposing unlawful discrimination. If you list "Reprisal," please state the nature of the prior EEO activity in which you were engaged, i.e. did you file a prior EEO complaint? Use an additional sheet of paper, if necessary.

It is very important that you be precise as to the dates of all actions or events you are protesting. In addition, the claims listed in item 9, must be limited to those claims discussed with an EEO Counselor (*discussed within 45 calendar days of occurrence of the event, or within 45 calendar days of the effective date, if a personnel action*) or like or related claims. If any of the claims listed in item 9 were discussed with an EEO Counselor, but not within 45 calendar days of their occurrence or of their effective date, you must explain why you waited more than 45 calendar days. If any of the claims listed in item 9 were not discussed with an EEO Counselor, please contact the Office of Resolution Management (ORM), Regional EEO Officer IMMEDIATELY. The requirement that you contact an EEO Counselor about every claim listed in item 9 will not be waived under any circumstances. Failure to do so will only delay the processing of your complaint.

It is your responsibility to keep the (ORM) informed of your current address. If you move, immediately advise the ORM District Office where you filed this complaint of your new address. In addition, you may receive certified and express mail in connection with your complaint. It is your responsibility to claim all certified and express mail. Failure to notify ORM of a change in address or to claim certified and express mail may lead to dismissal of your complaint.

REPRESENTATION: You may have a representative of your own choosing at all stages of the processing of your complaint. No EEO Counselor, EEO Investigator or EEO Officer may serve as a representative. (Your representative need not be an attorney, but only an attorney representative may sign the complaint on your behalf.)

WHEN TO FILE: Your formal complaint must be filed within 15 calendar days of the date you received the "Notice of Right to File a Discrimination Complaint" (NRTF) from your EEO Counselor. If you do not meet this time limit, you must explain why you waited more than 15 calendar days to file. These time limits may be extended under certain circumstances; however, they will NOT be waived and your complaint will NOT be investigated unless you explain your untimeliness and the explanation is acceptable in accordance with EEOC, 29 C.F.R. §1614(c).

WHERE TO FILE: The complaint should be filed with the ORM District Office identified in the NRTF. You may submit a copy either by mail, in person, electronically (via e-mail), or by facsimile. Filing instructions are contained in the cover letter attached to the NRTF.

PRIVACY ACT STATEMENT: Maintenance and disclosure of VA Form 4939 is made in accordance with the Privacy Act of 1974. Collection of the information on this form is authorized and/or required by the regulations of the EEOC, 29 C.F.R. §1614. All records, from which information is retrieved, by the name or personal identifier of a respondent, are maintained by a Government-wide Systems of Records: EEOC/GOVT-1, Equal Employment Opportunity Complaint Records and Appeal Records. The information collected will be used by ORM to determine whether your complaint is acceptable for investigation and in connection with any subsequent investigation and processing of your complaint. In the course of any investigation, this form may be shown to any individual who may be required by regulations, policies or procedures of the EEOC and/or ORM to provide information in connection with this complaint, including individuals you may have identified as responsible for the acts or events at issue in this complaint. Other disclosures may be: (a) to respond to a request form from a Member of Congress regarding the status of the complaint or appeal; (b) to respond to a court subpoena and/or to refer to a district court in connection with a civil suit; (c) to disclose information to authorized officials or personnel to adjudicate a complaint or appeal; or (d) to disclose information to another Federal agency or to a court or third party in litigation when the Government is party to a suit before the court.

RESPONDENT BURDEN STATEMENT: In accordance with the Paperwork Reduction Act of 1995, The Department of Veterans Affairs (VA) may not conduct or sponsor, and the respondent is not required to respond to this collection of information unless it displays a valid OMB Control Number. The valid OMB Control Number for this information collection is 2900-0716. The collection of this information is voluntary. However, the information is necessary to determine if your complaint of employment discrimination is acceptable for further processing in accordance with EEOC, 29 C.F.R. §1614. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the form. Send comments regarding this burden estimate or any other aspects of this collection, including suggestions for reducing this burden, to VA Clearance Officer (005R1B), 810 Vermont Avenue, Washington, DC 20420. SEND COMMENTS ONLY. DO NOT SEND THIS FORM, A COMPLAINT OF EMPLOYMENT DISCRIMINATION, OR REQUEST FOR BENEFITS TO THIS ADDRESS

Attachment to Formal EEO Complaint of Allison Gill

November 21, 2019

Claims:

1. The Agency violated the Rehabilitation Act when it failed to accommodate Ms. Gill and failed to properly engage in the interactive process.

Background: Ms. Gill requested an accommodation of 100% telework on or about May 21, 2019. Around that time, she also requested and was approved for FMLA leave, which extended through August 2, 2019.

Specifics of claim: The Agency failed to respond to the accommodation request until July 26, 2019 and then denied it for pretextual and false reasons. In an email sent to Ms. Gill's work email on July 26, 2019, the Agency denied Ms. Gill's accommodation request for 100% telework, but instead approved her for 3 days per week telework. Pamela Ballou-Moore, the Reasonable Accommodation Coordinator ("RAC") stated that the reason for the denial was:

Specifically, the recent reorganization of your office has created a requirement for staff to be in Washington, D.C. to carry out certain essential job functions. For example, some face-to-face interaction between you and the organization's clients is needed to build an effective relationship with the organization's clients. Additionally, your physical presence in the office is required to provide some of the training you are tasked with providing. Moreover, granting your request for 100% telework would greatly increase the workload of those employees present in the office by requiring them to take on more assignments that require presence in the office. Besides negatively impacting the organization's ability to carry out its mission, the Rehabilitation Act does not require the Agency to grant an employee a reasonable accommodation that would require removing one or more the employee's essential job functions or that would result in increasing the workload on other employees in the requestor's organization.

The July 26 email also stated that the Agency would "close" Ms. Gill's accommodation request unless she responded by "Friday, August 5, 2019."¹ Ms. Gill was still on FMLA leave and did not receive the email until a few days later. By July 30, 2019, while still on FMLA, she requested an update on her reasonable accommodation request. On August 1, 2019, Mr. Grady responded that the requested accommodation had been denied and Ms. Gill should look at her work email for a response that was sent to her on July 26, 2019.

¹ August 5, 2019 was a Monday.

Ms. Gill then responded to the Agency on August 2, 2019, identifying the inaccuracies in the Agency's reasoning and reiterating her request for 100% telework. For example, Ms. Gill's job was not actually in Washington, DC. The Agency had directed her reassignment to Washington, DC, but informed her she was entitled to decline the reassignment because it was outside of her commuting area. She declined the reassignment request on June 24, 2019, and thus, she remained in her job, which was located in San Diego. On August 6, the RAC responded that Ms. Gill was "still in your current job position. However, as indicated, management cannot continue to allow you to remain in that position permanently while teleworking full-time for the reasons provided by management in my prior email to you. Nevertheless, while the Agency searches for a reassignment position for you, you are being allowed to continue teleworking full-time as a temporary interim accommodation." The RAC declined to specify that Ms. Gill's "current job position" was in San Diego and did not specifically respond to the issues raised by Ms. Gill in her August 2, 2019 reply.

Although the interim 100% telework was provided and extended, it was subject to overly restrictive conditions from August 12, 2019 to September 13, 2019. The 100% telework was never granted as a permanent accommodation.

2. Ms. Gill has been subjected to a hostile work environment based on her disability and retaliation for prior protected EEO activity.

Specifically, Mr. Grady began subjecting Ms. Gill to a hostile work environment and harassing her upon her return from FMLA leave in early August 2019. On August 6, 2019, Ms. Gill was contacted by Patrick Grady.² Mr. Grady informed Ms. Gill that he was conducting a "fact-finding" regarding her conduct. Mr. Grady did not provide her with either Kalkines or Garrity warnings. When Ms. Gill asked if she could have a representative during the fact-finding, Mr. Grady said she could not. He then proceeded to accuse her of abusing her FMLA leave. He showed her documents indicating that he had accessed her personal social media accounts and asked how she was able to engage in personal non-VA related activities while she was on FMLA and why she could not perform work at the Agency during that time.

Then, on August 9, 2019, Mr. Grady indicated that the 100% telework accommodation (mentioned in Claim 1) was only in place for 90 days.

On August 15, 2019, Mr. Grady provided Ms. Gill with a new telework agreement, dated August 12, 2019, that had overly restrictive conditions, such as that she must respond to Instant Messages within 10 minutes, answer telephone calls within 5 rings and stating that calls should not go to voice mail during normal working hours unless Ms. Gill was on another work-related call, and respond to inquiries and requests received by email within two hours of receipt. Ms. Gill's prior telework agreement had no such restrictions.

² Mr. Grady first sought, by email of July 16, 2019, to have a "discussion" with Ms. Gill, but she responded that she was on FMLA leave and it would not be appropriate for her to do so at that time.

Mr. Grady repeatedly demanded that Ms. Gill sign and agree to this overly restrictive, clearly discriminatory and retaliatory telework “agreement.” On August 19, 2019, Ms. Gill responded that the new telework restrictions were discriminatory, harassing and retaliatory. She requested LWOP.

Mr. Grady responded on August 20, reiterating the alleged need for the telework restrictions and not responding to Ms. Gill’s request for LWOP. Ms. Gill responded on August 20, 2019, reiterating her request for LWOP. The Agency then approved the LWOP.

On September 12, 2019, Mr. Grady asked for additional medical documentation from Ms. Gill as to why she needed LWOP. Ms. Gill provided the documentation.

On September 13, 2019, Mr. Grady instructed Ms. Gill that she would no longer be on LWOP and was “approved” for 100% telework without the prior restrictions. However, at this juncture, Ms. Gill’s condition was exacerbated by the harassment and needed LWOP. Through counsel, that request was made on September 13, 2019. Although Mr. Grady had refused to respond about the LWOP and had directed that Ms. Gill return to work, the RAC then approved the LWOP on September 13, 2019, and stated she would be continuing a search for a reassignment for Ms. Gill. Ms. Gill provided updated medical information on September 19, 2019. Finally, on September 30, 2019, the RAC approved LWOP until November 23, 2019, while the RAC said she would continue to explore the possibility of job reassignment as an accommodation. Ms. Gill remains on LWOP presently and the Agency has not identified any reassignment options as of this date.

In addition, all of the incidents perpetrated by the Agency in Claim 1, above, are also part of the continuing hostile work environment in Claim 2.

Relief Sought: Remediation of the hostile work environment, including consideration of disciplinary action against the management officials perpetuating the hostile work environment; restoration of leave; back pay with interest and benefits, calculated pursuant to the Back Pay Act, as amended; retroactive approval of the requested reasonable accommodation; compensatory damages in the amount of \$300,000, or the maximum amount permitted by law, whichever is greater; and attorney’s fees and costs.