

## Rebuttal Affidavit of Complainant

I, Max J. Meindl, County of AUSTIN, am a former employee of FEMA.

- Agency: FEMA
- Washington DC
- Office: PA
- Division: Recovery Division
- Branch: Infrastructure Branch
- Location: Bellville, TX
- Position: Direct Charge Core (DCC), Emergency Management Specialist (Recovery)
- Employment Dates: 08/2017-01/2025 *Entire fema employment*
  - o November 2023 to January 6, 2025, *for this specific position*

### Advisement

I have been advised of my duty to fully cooperate with the investigator assigned to my discrimination complaint. My statement must be truthful, detailed, and specific, including names, dates, places, and circumstances. It, along with my Informal Complaint, Counselor's Summary Report, Formal Complaint, and accepted issues, forms the basis of the investigation. I may submit additional evidence or suggest witnesses, though the investigator decides what to include or pursue. This statement is made under oath, is not confidential per EEOC and DHS regulations, and may be shared with accused parties or agency officials. I am protected from reprisal for participating in this process.

- Representation: I have retained Attorney Brent Smith, 116516 El Camino Real #406, Houston, TX 77062, [brent@bwsmithlaw.com](mailto:brent@bwsmithlaw.com).
- Rights: I may review and amend this statement before signing and will receive a copy.

I swear/affirm that the following statement is true and complete to the best of my knowledge.

### Accepted Issues for Investigation

Whether I, Max J. Meindl, Emergency Management Specialist (Applicant), of Bellville, TX, was discriminated against based on disability (physical, cardiovascular condition) and age (born 1951) by management when:

1. On August 16, 2024, my Reasonable Accommodation request was denied.
2. On January 6, 2025, I was terminated.

## Rebuttal Statement

I submit this rebuttal to counter the statements of my former supervisor, Anthony T. In, regarding the denial of my reasonable accommodation (RA) request (RAR0046767) on August 16, 2024, and my termination on January 6, 2025. I assert that FEMA discriminated against me based on my physical disability and age (74 at termination), violating the ADA (42 U.S.C. §12112) and ADEA (29 U.S.C. §623). Below, I address In's claims, detail our conversations, and present a timeline (Table 1) showing FEMA's pattern of discrimination, retaliation, and legal violations.

### Response to Anthony In's Statements

#### 1. Denial of Reasonable Accommodation (August 16, 2024)

Anthony In asserts that my RA request for permanent telework was denied because I couldn't perform "essential functions" like physical deployment, claiming FEMA engaged in an interactive process. This is false and pre-textual.

- o My Successful Remote Work: From March 2020 to May 2023, I performed exemplary remote work (Performance Reviews), with Anthony In approving 100% telework and marking me unavailable for deployment (Table 1, March 2020–May 2023). My success continued in 2024 until the denial, proving deployment wasn't essential for my role. FEMA's claim contradicts my record and the ADA's requirement to assess individual capabilities (42 U.S.C. §12111(8)).
- o A pattern of Delays and Denials: As shown in Table 1, my RA requests faced consistent neglect—e.g., RAR0023261 was ignored for 730 days, RAR0042452 (endorsed by Mark Underhill) was disregarded for 886 days, and RAR0046767 denied after a 194-day delay despite my proven telework success. These delays violate FEMA's 45-day processing standard (Directive 256-022-01) and the ADA's mandate for a timely interactive process (42 U.S.C. §12112(b)(5)(A); EEOC v. Supervalu Inc., 670 F.3d 759).
- o Discrimination Evidence: I meet the McDonnell Douglas prima facie case: I'm disabled, over 40, qualified (via telework), and faced an adverse action. FEMA's "deployment duties" excuse (Myers Email, Aug 16, 2024) is a pretext, as my performance disproves it, suggesting bias against my age and disability.

#### 2. Termination (January 6, 2025)

In claims, my termination for "medical inability" was legitimate after the RA process failed and no vacant positions were available. This is a cover for retaliation.

- o Pretextual Reasoning: My termination came six months after escalating RAR0046767 (Email to FEMA-OCR-EEO, Aug 22, 2024) and 17 days after filing my formal EEO

complaint (Dec 20, 2024; Table 1). This timing, following a history of retaliation since my 2018 complaint (HS-FEMA-01876), violates the ADA's anti-retaliation provisions (42 U.S.C. §12203(a); *Clark County v. Breeden*, 532 U.S. 268). The "medical inability" label is baseless given my telework success.

- o Retaliatory Pattern: Table 1 shows FEMA's consistent retaliation—e.g., closing my 2018 complaint without investigation and ignoring RA requests post-EEO activity. Their swift rejection of reassignment options (Oct 30, 2024) further indicates bad faith.
- o Discrimination Evidence: My termination after years of strong performance and EEO engagement meets McDonnell Douglas criteria, with the timing and pretext pointing to disability and age bias.

### 3. Conversations with Anthony In

Throughout 2024, I had multiple discussions with Anthony In about my underutilization and lack of work assignments. I told him I felt set up for failure due to FEMA's refusal to provide tasks matching my telework accommodation. These exchanges were often tense, and Anthony acknowledged my concerns but took no action. For example:

- o July 9, 2024, Teams Communication (Exhibit B): Anthony wrote, "Talked to Region, waiting for guidance," after I pressed him on the lack of work and RA delays. No guidance or tasks followed, despite my repeated pleas (personal notes).
- o May 29, 2024: We discussed deployment, and his Houston proposal was overruled in nine minutes (Email to FEMA-OCR-EEO, Aug 22, 2024), showing his awareness of my situation but inability or unwillingness to act.

This inaction exacerbated my stress, creating a hostile work environment and violating the ADA's requirement to provide reasonable accommodations (29 C.F.R. §1630.2(o)(1)(ii)). It supports my claim that FEMA targeted me due to my disability and age.

### **Pattern of Mistreatment and ADA Violations**

The timeline below, compiled from personal records, correspondence, and the EEO Counselor's Report, illustrates FEMA's discriminatory pattern:

Table 1: Timeline of Key Events and Violations

Date	Description	Evidence/Outcome
Sept 21, 2018	Filed harassment complaint HS-FEMA-01876 for disability-related mistreatment.	Closed without investigation (Oct 15, 2018).
Nov 26, 2018	Submitted RA request RAR001234 for episodic telework.	Denied by Jamie McAllister (Dec 10, 2018), no process.
June 26, 2019	Supervisor Dennis Alexander denied FMLA leave, misstating eligibility.	Email, June 26, 2019.
March 4, 2020	Voiced retaliation concerns to HR: "I don't want to seem like a scare monger."	Email to HR.
March 2020–May 2023	Performed exemplary remote work.	Performance reviews; personal notes.
Sept 21, 2021	Filed RA request RAR0017691 for vaccine exemption (disability-based).	Misclassified as religious, delayed 87 days (Dec 17, 2021).
Oct 28, 2021	Submitted RA requests RAR0023025 (telework) and RAR0023278 (religious).	Unresolved for 1,195 days; no response.
Jan 6, 2022	Filed RA request RAR0023261 for cardiovascular needs.	Ignored for 730 days; no response.
April 20, 2022	Suffered heart attack; informed Richard Cain: "Will be off this week..."	Email, April 20, 2022.
Aug 4, 2022	Submitted RA request RAR0042452 for permanent telework; endorsed by Underhill.	RA Form; Underhill Email, Aug 15, 2022 (ignored).
Jan 2, 2024	Filed RA request RAR0046767 for permanent telework.	RA Form; denied after 194 days (Aug 16, 2024).
May 29, 2024	Discussed deployment with Anthony In; Houston proposal overruled in 9 min.	Personal notes; Email to FEMA-OCR-EEO, Aug 22.
July 10, 2024	Traci Brasher admitted RA delays; Shelia Clemons sent unencrypted records.	Teams Log; Clemons Email, ID #2024-MED-331 (HIPAA violation).
Aug 16, 2024	EEO Specialist Anna Myers denied RAR0046767, citing "deployment duties."	Email from Myers.

Sept 3, 2024	Contacted EEO counselor; interviewed Sept 18, 2024.	EEO Counselor's Report.
Oct 17, 2024	Retained attorney Brent Smith; mediation failed (Oct 15–Dec 4, 2024).	Personal records.
Dec 20, 2024	Filed formal EEO complaint.	EEO Counselor's Report.
Jan 6, 2025	Terminated for "medical inability."	Termination Notice.

#### Key Violations:

- ADA: No interactive process (e.g., RAR001234), delays up to 1,195 days (Table 1), and ignored endorsements (RAR0042452) violate 42 U.S.C. §12112(b)(5)(A) (*Barnett v. U.S. Air*, 535 U.S. 391).
- HIPAA: Unencrypted medical records (July 10, 2024) breach 45 C.F.R. §164.312.
- Retaliation: Termination post-EEO complaint aligns with *Clark County v. Breedon*.
- Age Bias: Excessive scrutiny at 74 despite strong performance violates ADEA (*Babb v. Wilkie*, 140 S. Ct. 1168).

#### Witnesses and Evidence

- Witnesses:
  - o Jodi Hunter (denied appeal), Mark Underhill (endorsed RAR0042452), Traci Brasher (admitted delays), Richard Cain (notified of heart attack).
- Evidence:
  - o Performance reviews (2020-2023), RA forms, emails (e.g., Aug 22, 2024 to FEMA-OCR-EEO), Teams logs (Exhibit B, July 9, 2024), Termination Notice, Table 1.

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I have reviewed this [5]-page statement and swear/affirm it is true and complete. I understand it may be shared and included in the Record of Investigation.

Signed: /s/ MAX J MEINDL

Max J. Meindl

Date: March 22, 2025

Witness/Investigator:

[INVESTIGATOR/WITNESS]

[DATE]