



FEMA

March 8, 2019

MEMORANDUM FOR: Max Meindl
Program Delivery Manager | Houston TRO
DHS | FEMA-Recovery Directorate
Public Assistance Division

FROM: Jamie McAllister
Deputy Infrastructure Branch Director
DR 4332 TX JFO Austin
Region 6 Infrastructure Branch
DHS/FEMA

SUBJECT: Request for To Telework

This serves to deny your reasonable accommodation request for episodic telework dated November 26, 2018.

As your Supervisor of Record (SOR), I reviewed your signed 256 Form, and medical documentation submitted in support of your request to telework as a reasonable accommodation.

In order for a reasonable accommodation to be provided, it must first be determined that the individual making the request is a qualified individual with a disability. A qualified individual defined is as "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8).

42 U.S. Code § 12102 defines the term "disability" with respect to an individual as:

(A) A physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

The EEOC defines a reasonable accommodation as any change in the workplace or in the way things are customarily done that provides an equal employment opportunity to an individual with a disability when an employee with a disability needs an accommodation to perform the essential functions of the job held.

The EEOC defines essential functions as those job duties that are fundamental to the position that the individual holds or desires. According to the EEOC, evidence of whether a particular function is



essential includes the agency's judgment (generally a supervisor's, manager's and/or office director's judgment), and a written position description developed before a job is advertised.

The job announcement for the Cadre of On-call Response/Recovery Employee (CORE) position states:

“All candidates must be able to deploy with little or no advance notice to anywhere in the United States and its territories for an extended period of time. Deployments may include working in excess of eight hours a day, or in excess of 40 hours per week, including weekends and holidays, and under stressful, physically demanding, and austere conditions.”

In *Demyanovich v. Cadon Plating and Coatings, LLC*, 747 F.3d 419 (6th Cir. 2014), the court found that “a written job description and the employer’s judgment constitute evidence of whether a particular job function is essential”. At the Texas Recovery Office Public Assistance Cadre (TRO PA) telework is not allowed for emergency management employees outside of very limited weather-related cases. Management has determined it is an essential job function to travel to the office and visit applicants in person at their office location.

Further, pursuant to 29 U.S.C. § 701 et seq., the Rehabilitation Act of 1973, an employer is not required to eliminate an essential function of a position in response to a request for reasonable accommodation. Also, see (*Minnihan v. Mediacom Commc’ns Corp.*, 779 F.3d 803 (8th Cir. 2015)). Your request to telework would require removal of an essential job function. The appropriate accommodation would be a reassignment to a position that allows telework. Should you choose to appeal the SOR’s decision, you may do so using the following procedure:

Request for reconsideration:

If an individual wishes to request reconsideration of this decision, she/he must take the following steps:

An employee may appeal directly to his/her Second Level Supervisor. The employee may present additional information in support of his/her request.

An applicant may appeal directly to the Disability Employment Program Manager of the Office of Equal Rights. The applicant may present additional information in support of his/her request.

If an individual wishes to file an EEO Complaint, or to pursue MSPB or union grievance procedures, she/he must take the following steps:

For an EEO complaint pursuant to 29 C.F.R. 1614, contact an EEO Counselor in the Office of Equal Rights within 45 days from the date of this denial of reasonable accommodation; or



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For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or

Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 C.F.R. 1201.3

Jamie McAllister, Deputy IBD

Name & Title of Deciding Official

Signature of Deciding Official

Date

Acknowledgement of Receipt:

Please sign the acknowledgement of receipt below. Your signature does not indicate agreement with this decision, and by signing, you do not forfeit any of your rights cited above. Your signature only represents your receipt of this decision on the date signed.

Max Meindl

DATE