

FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10656

ANNETTE KINGSOLVER,

Plaintiff-Appellant,

versus

U.S. ATTORNEY GENERAL,

UNITED STATES DEPARTMENT OF JUSTICE,

BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 2:23-cv-00058-LGW-BWC

Before WILLIAM PRYOR, Chief Judge, and JILL PRYOR and BRASHER,
Circuit Judges.

BRASHER, Circuit Judge:

This appeal is about an employee's request for accommodation under the Rehabilitation Act. Annette Kingsolver was a government employee who suffered from depression and cardiac arrhythmia. As an accommodation for these conditions, she requested unpaid leave, a lateral transfer to a comparable position, or other undefined help. In response, her supervisors offered her flexible use of her accrued paid leave and, because there were no comparable positions for which she was qualified, offered her a demotion instead of a lateral transfer. She then requested and received the demotion, which accommodated her health concerns.

Kingsolver filed an Equal Employment Opportunity complaint and later a judicial complaint alleging disability discrimination. She argued that she was coerced into requesting the demotion and that her supervisors failed to offer her reasonable accommodation. The district court granted summary judgment to the government, concluding that Kingsolver had received the accommodation that she requested and her request had not been coerced. Kingsolver appealed, arguing that there were disputes of material fact about whether she experienced disability discrimination and whether her demotion request was coerced.

We must answer two related questions. Did the government have a duty to offer other accommodations to Kingsolver in addition to the flexible use of paid leave and a demotion? Did the government discriminate against Kingsolver when it demoted her

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because of her disability? We answer both questions in the negative, and, accordingly, we affirm.

I.

Annette Kingsolver was an employee at the Bureau of Alcohol, Tobacco, and Firearms who suffered from clinical depression and cardiac arrhythmia. For several years, she worked in a GS-7 position. But after a desk audit found that Kingsolver was working above her grade level, she was promoted to a GS-9 position. Both positions required her to use the Financial Resource System.

After that promotion, Kingsolver began experiencing increased stress related to the Financial Resource System and her job duties. She complained to her supervisors, explaining that the Financial Resource System was worsening her depression and cardiac arrhythmia. During a meeting with one supervisor, Abra Lattany-Reed, Kingsolver asked for leave without pay, a lateral transfer to a comparable position, or anything else that would help. Reed told Kingsolver that she could not take leave without pay; instead, she had to exhaust her roughly 240 hours of paid annual and sick leave. Kingsolver responded that she wanted to save her annual and sick leave in case of a family emergency.

Kingsolver continued to ask Reed and her other supervisor, Thomas Brandon, for one of three accommodations (leave without pay, lateral transfer, or anything else that would help) over the next several months. At first, Reed and Brandon responded by telling Kingsolver that leave without pay was not an option and that the

only available position for which she was qualified was a GS-7 position (a demotion from her current GS-9 position).

Eventually, Kingsolver provided Reed with letters from two of her doctors that described the link between work-related stress and her conditions. One of the letters relayed Kingsolver's assertion that her windowless office had caused some of her stress and depression. In response to that letter, Reed offered to move Kingsolver to an office with a window and to permit her liberal use of her accrued annual and sick leave.

But these accommodations did not resolve Kingsolver's work-related stress. She continued to complain to Reed and Brandon about the link between the Financial Resource System and her health, but she also learned that new GS-9 positions might become available in several weeks. She decided to wait to see if the positions became available before she submitted a written request for accommodation.

While she was waiting, her stress did not resolve. At one point, she had to leave work due to chest pains. She continued asking her supervisors for leave without pay, a lateral transfer, or anything else that would help. Her supervisors responded by reassuring her that new positions would soon be available.

After several weeks passed and no new GS-9 positions became available, Kingsolver filed a written request for accommodation, requesting a transfer to a comparable position. Two days later, Kingsolver was assigned new duties that she felt were appro-

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priate for a GS-12 level. She called Reed crying, and she again requested leave without pay or a lateral transfer. Reed responded that only a GS-7 position was available and that Kingsolver could not take leave without pay. Kingsolver left work to see her cardiologist, who told her that she was a candidate for a heart attack and that she had to make a choice between her health and keeping her GS-9 position.

The next week, Kingsolver again asked Reed for leave without pay, a lateral transfer, or anything else. Reed again denied her leave without pay, responded that the only transfer option was to take the GS-7 position, and told Kingsolver that she needed to give her an answer by the end of the day if she wanted the transfer. Kingsolver waited to talk with her husband that evening and did not provide an answer until Reed asked again the next morning, when Kingsolver accepted the demotion. Reed dictated to Kingsolver what to write on her accommodation request form, which stated that she would “accept another program area position comparable to the Management Analyst position . . . or the GS 07-06 Management Assistant position that [she] previously held.” Dkt. 21-14.

Kingsolver was eventually transferred to the GS-7 role, which did not involve the Financial Resource System, and her depression and cardiac arrhythmia improved.

Kingsolver contacted the Equal Employment Opportunity office, filing a formal complaint alleging that her demotion was discriminatory. An EEOC Administrative Judge concluded that the

ATF had failed to accommodate Kingsolver, but on appeal the Office of Federal Operations reversed the damages award and remanded for a liability hearing. A different EEOC Administrative Judge agreed with the first judge, but on appeal the Office of Federal Operations again reversed and denied Kingsolver's motion for reconsideration.

Kingsolver filed a complaint in federal district court against the Attorney General, the Department of Justice, and the ATF. In the complaint, she alleged that the government violated the Rehabilitation Act by failing to reasonably accommodate her.

After discovery, the parties both moved for summary judgment. The district court granted the government's motion and denied Kingsolver's motion. The court assumed without deciding that Kingsolver was a qualified individual with a disability but concluded that she had failed to prove that she was subjected to disability discrimination. The court held that her demotion was not discriminatory because Kingsolver had not been coerced into requesting it. The court added that her request for a lateral transfer was unreasonable because it would have required the ATF to create a new position, and her request for indefinite leave without pay was also unreasonable.

Kingsolver appealed.

II.

We review *de novo* the district court's grant of summary judgment and apply the same standard used by the district court.

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Burton v. Tampa Hous. Auth., 271 F.3d 1274, 1276–77 (11th Cir. 2001). All evidence and factual inferences reasonably drawn from the evidence are viewed in the light most favorable to the non-moving party. *Id.* at 1277. Summary judgment may be affirmed “if there exists any adequate ground for doing so, regardless of whether it is the one on which the district court relied.” *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1117 (11th Cir. 1993).

III.

The Rehabilitation Act bars the federal government from discriminating against people based on their disabilities. 29 U.S.C. § 794(a). The Act incorporates by reference substantive standards from Title I of the Americans with Disabilities Act. 29 U.S.C. § 791(f); *see* 42 U.S.C. § 12112(a). To bring a successful Rehabilitation Act claim, a plaintiff must prove the elements for an ADA claim: namely, that (1) she is disabled; (2) she was a “qualified individual” at the relevant time, meaning that she could perform the essential functions of the job with or without reasonable accommodations; and (3) she was discriminated against because of her disability. *See Lucas v. W.W. Grainger, Inc.*, 257 F.3d 1249, 1255 (11th Cir. 2001); *Gaston v. Bellingrath Gardens & Home, Inc.*, 167 F.3d 1361, 1363 (11th Cir. 1999).

The district court assumed without deciding that Kingsolver is disabled and a qualified individual. For the sake of this appeal, we do too. But Kingsolver argues that there were disputes of material fact about whether she experienced disability discrimination be-

cause the ATF failed to provide her with a reasonable accommodation. She also argues that there was evidence that her request for the GS-7 demotion was coerced. This appeal thus turns on two issues: First, whether the ATF had a duty to offer other accommodations to Kingsolver in addition to the flexible use of her accrued leave and a GS-7 transfer. Second, whether Kingsolver's decision to accept the GS-7 transfer as an accommodation was coerced such that it was an act of disability discrimination. We discuss each issue in turn.

A.

As to the first issue, we conclude that the ATF did not have a duty to provide the other accommodations that Kingsolver requested because they were either not specific or not reasonable. An employer's duty to provide a reasonable accommodation is triggered when an employee makes a specific demand for an accommodation and establishes that the requested accommodation is reasonable. *Owens v. Governor's Off. of Student Achievement*, 52 F.4th 1327, 1334 (11th Cir. 2022). The plaintiff bears the burden of proving that a reasonable accommodation exists. *Terrell v. USAir*, 132 F.3d 621, 624 (11th Cir. 1998). Kingsolver alleges that she made three kinds of accommodation requests in addition to her demotion request: (1) general "help," (2) lateral transfer to a comparable position, and (3) leave without pay.

We will address each request in turn.

First, Kingsolver’s request for “help” is not a specific request. An employer has a duty to engage in an interactive process to provide a reasonable accommodation, but that duty is triggered only when an employee makes a *specific* demand. *Owens*, 52 F.4th at 1334; 42 U.S.C. § 1981a(a)(3). Requesting undefined “help” is not specific and therefore does not trigger this duty.

Second, Kingsolver’s request for a lateral transfer to a position that did not exist is also unreasonable as a matter of law. For reassignment to a new job to be a reasonable accommodation, the employee must be qualified for that new job. *EEOC v. St. Joseph’s Hosp., Inc.*, 842 F.3d 1333, 1344 (11th Cir. 2016). An employer is not required to create a new position or displace other employees to accommodate a disabled employee. *See Terrell*, 132 F.3d at 626–27. The record contains no evidence that comparable GS-9 positions for which Kingsolver was qualified existed when Kingsolver requested a lateral transfer. A lateral transfer would thus have required the ATF to create a new position, which is unreasonable.

Third, Kingsolver’s request for additional leave without pay, instead of using her available leave with pay, was unreasonable. In response to Kingsolver’s request for leave, her supervisors offered her flexible use of her existing 240 hours of paid annual and sick leave. Kingsolver had requested leave “simply to get away from the stress and get herself together.” Dkt. 30 at 16. The ATF’s offer of paid leave under its existing policies was a reasonable accommodation to that request. *See Lucas*, 257 F.3d at 1255.

Nothing about Kingsolver's disability required the ATF to offer her unpaid leave in addition to her existing paid leave. Kingsolver never suggested that her 240 hours of paid leave were insufficient; she just preferred not to use those hours.¹ Whether Kingsolver's leave was paid or unpaid also had no bearing on the usefulness of the leave as an accommodation; the category of leave did not affect Kingsolver's ability to "get away from the stress and get herself together." Dkt. 30 at 16. And Kingsolver's reasons for refusing the offer of paid leave (*e.g.*, wanting to preserve it for vacations, family emergencies, and the like) had nothing to do with her disability.

The ATF offered Kingsolver a reasonable accommodation when it offered her flexible use of her paid leave, but she declined to take it. The ADA and Rehabilitation Act do not demand that an employer create a disability-specific program to accommodate an employee when an existing program already provides the accommodation that the employee needs. *See Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1286 (11th Cir. 1997) ("[U]nder the ADA a qualified individual with a disability is not entitled to the

¹ Because Kingsolver never used her existing leave or suggested that she needed more time than she had accrued in leave, she seems to be requesting indefinite leave, which would have been unreasonable. *See Wood v. Green*, 323 F.3d 1309, 1314 (11th Cir. 2003) (holding that a request for leave without an end date is unreasonable). But we will assume without deciding that her request contemplated some kind of end date.

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accommodation of her choice, but only to a reasonable accommodation.” (citation modified)).

In sum, the ATF did not have a duty to provide the other accommodations that Kingsolver requested.

B.

We also conclude that no reasonable jury could find that Kingsolver was demoted as an act of disability discrimination. An employer may not take an adverse employment action against an employee “because of [her] disability.” *Greenberg v. BellSouth Telecomms., Inc.*, 498 F.3d 1258, 1263 (11th Cir. 2007) (citation modified); *see also* 42 U.S.C. § 12112(a). Kingsolver argues that she was discriminated against because she was coerced into accepting a demotion because of her disability. We disagree.

No reasonable jury could conclude that Kingsolver was coerced into accepting a demotion. We consider several factors when evaluating whether an employer coerced an employee, including whether the employee had any alternatives, whether the employee understood the nature of the choice, and whether the employee had advice of counsel and time to decide. *See Hargray v. City of Hallandale*, 57 F.3d 1560, 1568 (11th Cir. 1995). The undisputed facts establish that Kingsolver had at least one alternative accommodation, *i.e.*, using her paid leave. The record also reflects that she understood the nature of the choice because she had been aware for several weeks before accepting the demotion that there were no available GS-9 positions. When a GS-7 position eventually became available, Kingsolver’s supervisor gave her several hours

to consider it. Ultimately, Kingsolver requested the transfer to a lower-level position, was happy when it was granted, and experienced improved symptoms upon receiving the demotion.

Kingsolver protests that she was coerced into requesting a demotion by the ATF's decision to deny her request for unpaid leave. But, again, that argument wrongly presupposes that her employer had a duty to provide unpaid leave. *See Stewart*, 117 F.3d at 1286. No reasonable jury could conclude from this record that Kingsolver was coerced into accepting a demotion as an act of disability discrimination.

IV.

The district court's judgment is **AFFIRMED**.