



UNITED STATES DEPARTMENT OF EDUCATION

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In the Matter of

Docket No. ED-2017-EXT-0001

G,

Section 504 Complaint

Complainant.

DECISION OF THE SECRETARY

This matter comes before me on appeal by [redacted] from a July 11, 2017, decision (Initial Decision) issued by the Office of Equal Employment Opportunity Services (OEEOS). In the Initial Decision, OEEOS Director Michael Chew made a finding of No Discrimination in [redacted]'s complaint under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and 34 C.F.R. Part 105 (hereinafter, "Section 504").

Based on the following analysis, I will affirm the Initial Decision in part and set aside and remand it in part.

Background

The factual background of this case is laid out in the Initial Decision's Findings of Fact and is already known by the parties. I repeat that background only briefly.

[redacted] took out student loans to attend ITT Tech in 1989 and 1990.¹ Subsequently, he suffered a significant injury to his right hand in a workplace incident, causing chronic pain and preventing him from working further.² In 2006, he apparently submitted two separate applications to the Department for discharge of his student loans. One, signed on November 13, 2006, by psychiatrist Michael Anthony, sought a discharge based on a mental disability. The other, signed on December 4, 2006, by Dr. Paula G. Carmichael, sought a discharge based on a physical disability.³

¹ Initial Decision, p. 1.

² *Id.*

³ *Id.*, p. 2.

On December 18, 2006, the Department preliminarily approved a discharge application for [redacted]. However, on February 9, 2007, Dr. Anthony provided his professional opinion to the Department that [redacted] had the capacity to engage in a form of employment at some point in time, meaning he did not qualify as totally and permanently disabled.⁴ Thus, on May 9, 2007, the disability discharge application based on a mental disability was denied. There is no evidence of what became of the separate application for discharge based on a physical disability. Director Chew describes “the Department’s failure to consider your 2006 disability discharge application based on a physical disability” as “at most . . . an administrative oversight.”⁵

[redacted] filed this complaint with the Department on January 31, 2017. OEEOS investigated the complaint from then until July 6, 2017, ultimately resulting in the Initial Decision. In the Initial Decision, Director Chew considered [redacted], for the limited purpose of his analysis, to be an individual with a disability under the Rehabilitation Act.⁶ Director Chew characterized the basis of [redacted]’s complaint as “improper processing of your Total and Permanent Disability discharge application.”⁷ Director Chew found that the Department accepted and considered [redacted]’s application, but denied it based on a failure to pass medical review.⁸ Finding no evidence the Department discriminated against [redacted] on the basis of his disability, Director Chew made a finding of No Discrimination.⁹

[redacted] has since appealed the Initial Decision to me. I now turn to my analysis.

Analysis

Section 504 and related regulations prohibit the Department from excluding an individual with a disability from participation in any program or activity on the basis of that disability. My analysis is limited to consideration of whether the Department engaged in any discrimination against [redacted] in violation of Section 504.¹⁰

On appeal, [redacted] argues that the Department’s discriminatory act was failing to accept both of his applications for discharge, “especially the main one which is the physical disability.”¹¹ Through counsel, OEEOS repeats Director Chew’s conclusion in the Initial Decision that “FSA [did] not consider[] his 2006 application based on physical disability” due to “an administrative oversight.”¹² He further asserts that “there is nothing in the record to suggest that any actions taken by the Department were motivated by his disability status.”¹³

⁴ *Id.*, pp. 4–5.

⁵ *Id.*, p. 5.

⁶ *Id.*, p. 4. Likewise, for the purposes of this appeal, I will operate under the presumption that [redacted] is an individual with a disability protected under the Rehabilitation Act.

⁷ *Id.*

⁸ *Id.*, p. 5.

⁹ *Id.*

¹⁰ [redacted] makes significant arguments about the validity of the ITT Tech loans based on ITT Tech’s accreditation status. However, that issue is not before me in this proceeding.

¹¹ [redacted] Appeal, p. 3.

¹² Agency Response, p. 4.

¹³ *Id.*, p. 3.

With regard to the application based on mental disability, I agree with OEEOS. [redacted] has not shown that the Department's handling of that application constituted a discriminatory act based on his disability. The record shows that the Department considered his application for discharge based on a mental disability, preliminarily approved it, but ultimately denied it based on the representations of the doctor who signed the application. The record shows that the Department properly considered the first application and made a decision on its merits based on the appropriate facts.

With regard to the application based on physical disability, the record remains incomplete. [redacted] asserts that he submitted a separate application based on physical disability and has provided a copy of it. The copy in the record is only the first page of the application and bears no mark indicating when or if it was received by the Department.¹⁴ However, OEEOS states in both the Initial Decision and its response to this appeal that [redacted] submitted two applications.¹⁵ Furthermore, OEEOS does not assert that [redacted] was barred from submitting a separate application based on physical disability. On the contrary, OEEOS repeatedly suggests that [redacted] may file a new discharge application based on his physical disability if he believes he qualifies.

Taken together, this evidence suggests the Department received but never issued a decision on [redacted]'s second application. The conclusion in the Initial Decision that the application was not processed due to "at most an administrative oversight" is an insufficient explanation for what happened to [redacted]'s application and whether it remains pending. Therefore, I will set aside the Initial Decision with regard to the application based on a physical disability. I will remand the case to OEEOS to investigate the handling of the second application and whether it was properly decided in accordance with the law and Departmental policy.

ORDER

Accordingly, the Initial Decision is AFFIRMED with regard to the application based on mental disability, and SET ASIDE and REMANDED with regard to the application based on physical disability.

So ordered this 17th day of April 2018.

/s/
Betsy DeVos

Washington, D.C.

¹⁴ Form OMB 1845-0065, dated Dec. 4, 2006, signed by Paula G. Carmichael, M.D.

¹⁵ Initial Decision, p. 2; Agency Response, p. 2