



FY22 Virtual Symposium – Modernizing What’s Next: Reasonable Accommodations for the Federal Workplace

**Presenter: Ann Kaufmann, VBA Chief Of Reasonable
Accommodation, Reasonable Accommodation and Worker’s
Compensation Division**

Agenda

- Reasonable Accommodation Overview
- Authorities & Roles & Responsibilities--Employee, District Reasonable Accommodation Coordinator, and Designated Management Official
- RA Process Timeline and Medical Documentation
- Essential Functions Analysis and Interactive Meeting
- Adjudication of Reasonable Accommodation and Ordering of approved RAs
- Best Practices & Special Concerns
- Specific RA Issues
- Q&A

Authorities, References, & Abbreviations

- Executive Order 13164, Establish Procedures To Facilitate the Provision of Reasonable Accommodation
- Rehabilitation Act of 1973, Public Law 93-112, 29 U.S.C. 705; 791 et seq. – Sections 501, 504, and 508 (definition of RA)
- Americans with Disabilities Act of 1990 (ADA), 42, U.S.C. 12101 et seq. Titles I and V
- ADA Amendments Act of 2008 (Public Law 110-325. ADAAA), 42 U.S.C.12101
- VA Handbook 5975.1 - Reasonable Accommodation: Employees and Applicants with Disabilities
- Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA [EEOC](#)

Abbreviations used throughout the presentation:

- RA – Reasonable Accommodation
- EE – Employee
- EF – Essential Functions
- DMO – Designated Management Official
- DRAC – District RA Coordinator
- OGC – Office of General Counsel
- NRAC – National RA Coordinator

The Rehabilitation Act of 1973

- Protects employees and applicants from discrimination based on disability.
- Places a duty on agencies to take affirmative action to provide effective accommodations to qualified individuals with disabilities.
- Protects individuals from unlawful disclosure of their confidential medical information.

The Americans With Disabilities Act Amendment Act

- Made significant changes in the process for providing accommodations under the Rehabilitation Act.
- Intended to convey **BROAD COVERAGE** of the Rehabilitation Act.
- Focus more on the Agency's response to the request for accommodation than on whether the employee meets the requirements for establishing they have a disability.

Reasonable Accommodation Defined

A Reasonable Accommodation (RA) is any change in the work environment or policy to help a person with a disability:

- Apply for a job;
- Perform the duties of a job;
- Enjoy the benefits & privileges of employment

How can a RA request be made?

- A family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual. *The Equal Employment Opportunity Commission's (EEOC) Enforcement Guidance: Guidance: [EEOC Enforcement Guidance](#)*
- No magic words to requesting RA for a disability. *The EEOC's Enforcement Guidance:*
 - **Example-** Employee tells supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing"

Requesting a Reasonable
ACCOMMODATION



Who's eligible to an RA

Under the ADAAA/Rehab Act, an applicant or EE is entitled to an accommodation when:

- **One-** The individual meets the definition of “disability” under the ADA (as amended by the ADAA); and
- **Two-** The individual is a “qualified” individual- one who meets all the requirements of the position (education, skills, etc.) and who can safely perform the essential functions of the position with or without an accommodation; and
- **Three-** The accommodation does not place an undue hardship on the agency
 - Factors to consider in assessing undue hardship include the overall size of the agency's program with respect to number of employees; the type and number of facilities; size of the budget*; the type of agency operation, composition, and structure of the agency's workforce; and the nature and cost of the accommodation. *29 CFR 1630.2*



****Only the Secretary of VA can deny a RA based on cost***

Accommodation Examples

Restructuring jobs and/or modifying schedules



Acquiring or modifying equipment

Readers or interpreters



Roles and Responsibilities- EE & DRAC

The Employee (EE) is responsible for:

- Applying for RA
 - An agency cannot be found liable for failing to provide reasonable accommodation when an employee doesn't request it, and the agency is otherwise unaware of her possible need for accommodation. *Sutton v. U.S. Postal Service, 107 LRP 1430 , EEOC No. 0120055392 (EEOC OFO 2006).*
- Providing timely and sufficient medical documentation/form VA 0857e (Request for Medical Documentation)
- Participating in interactive process with the DMO

The District Reasonable Accommodation Coordinator (DRAC) is in a neutral capacity and responsible for:

- Elucidating to EE the RA process
- Reviewing medical documentation to determine eligibility
- Elucidating to DMOs the RA process, including adjudication
- Submit to OI&T requests for assistive technology and approved RA equipment request Purchase Card Holder to order/track with DMO/DRAC in cc

Roles and Responsibilities- DMO

The Designated Management Official (DMO) is responsible for:

- Knowledgeable regarding RA policy and processing procedures per *VA Handbook 5975.1*
- Understands Rehab Act of 1973 **supersedes** any existing policies (telework, tour of duty, parking, breaks, etc.)
- Identifies what are the Essential Functions (EF) of the position:
 - “Essential Functions” *means the fundamental job duties of the employment position the individual with a disability holds or desires...does not include marginal functions... 29 CFR 1630.2.*
 - Completes the Essential Functions Analysis for Work At Home accommodation requests
- **Maintains confidentiality** of RA consistent with VA Handbook 5975.1.
- **DMOs/Supervisors must refrain from reviewing medical documentation/discussing EE RA with others who do not have a direct/business need to know**
- **If medical is provided to DMO – Delete immediately – Ask EE to send medical to DRAC**
- *Failing to engage in the interactive process can be a **violation of the Rehabilitation Act of 1973, as amended, and may create liability for VA***

Privacy

- The Americans with Disabilities Act, 42 USC 12112 (d)(3)(B) and 12112(d)(4)(c), requires employers to maintain information regarding the medical condition and history of individuals with disabilities in separate medical files and to treat such information as confidential except in specified situations. See 29 CFR 1630.14 (b)(1), (c)(1), and (d)(1).
- Individuals who have access to information necessary to make a decision about whether to grant a requested accommodation may not disclose this information except under the following circumstances:
 1. Supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodations.
 2. First aid and safety personnel may be told if the disability might require emergency treatment.
 3. Government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act.
 4. The information may, in certain circumstances, be disclosed to workers' compensation offices or insurance carriers.
 5. Agency EEO officials may be given the information to maintain records and evaluate and report on the agency's performance in processing reasonable accommodation requests. Policy Guidance: Guidance on Executive Order 13164 -- Establishing Procedures to Facilitate the Provision of Reasonable Accommodation .

Privacy

Employee(s) Ask About Co-worker's Reasonable Accommodations?

- The Equal Employment Opportunity Commission (EEOC) offers:
“If employees ask questions about a coworker who has a disability, the employer must not disclose any medical information in response. An employer also may not tell employees whether it is providing a reasonable accommodation for a particular individual.”
- The EEOC offers that a manager:
“...may explain that the EE is acting for legitimate business reasons or in compliance with federal law...”



- *Even when a disability is obvious, it is up to the EE whether to share*

RA Processing Timeline

- EE submits request to mgmt. or directly to RACP email. The request is entered into RAP-IS, (automated RA processing system) and acknowledged by the DMO **within 5 calendar days**
- DRAC contacts the EE/representative and DMO to process. An interim accommodation may be provided by DMO while employee obtains **form VA0857e (Request for Medical Documentation)**
- DRAC determines if medical is needed, and provides form VA 0857e to EE and RA processing timeline freezes up to **90 calendar days**



RA Processing Timeline

- DRAC reviews medical for sufficiency and provides DMO expert guidance for Interactive Meeting; Includes limitations identified by Health Care Provider (HCP) and references on accommodations
- The DMO completes **Essential Function Analysis** (as required by DRAC) to determine portability of the position for Work At Home RA. DRAC will review/ask tough questions (must withstand 3rd party review). DMO conducts the meeting and makes decision on request **within 27 calendar days.**
- The accommodation is provided via **form VA0857f (Accommodation Request Determination)**, and any equipment to be ordered by the business line's Purchase Card Holder (if applicable)
- The DMO may set a review date for accommodation **(three to twelve months)** for effectiveness, particularly for telework and admin RA requests (DMO must follow up with their EE)



Essential Functions analysis Form

ANALYSIS OF ESSENTIAL FUNCTIONS

1. NAME OF EMPLOYEE

2. EMPLOYEE'S OFFICIAL TITLE

3. SERIES/GRADE

4. TODAY'S DATE

FACTORS TO CONSIDER IN DETERMINING WHETHER A JOB FUNCTION IS ESSENTIAL

1. THE EMPLOYER'S JUDGMENT AS TO WHICH FUNCTIONS ARE ESSENTIAL (i.e. the reason the position exists is to perform that functions);
2. WRITTEN JOB DESCRIPTIONS PREPARED BEFORE ADVERTISING OR INTERVIEWING APPLICANTS FOR THE JOB;
3. PERFORMANCE FACTORS ASSOCIATED WITH THE POSITION
4. THE AMOUNT OF TIME ACTUALLY SPENT ON THE JOB PERFORMING THE FUNCTION;
5. THE CONSEQUENCES OF NOT REQUIRING THE INCUMBENT TO PERFORM THE FUNCTION;
6. THE TERMS OF ANY COLLECTIVE BARGAINING AGREEMENT;
7. THE WORK EXPERIENCE OF PAST INCUMBENTS IN THE JOB;
8. THE CURRENT WORK EXPERIENCE OF INCUMBENTS IN SIMILIAR JOBS; AND/OR
9. THE NUMBER OF OTHER EMPLOYEES AVAILABLE TO PERFORM THE FUNCTION OR AMONG WHOM THE PERFORMANCE OF THE FUNCTION CAN BE DISTRIBUTED.

ESSENTIAL FUNCTION <i>(briefly describe)</i>	PERCENTAGE OF TIME <i>(spent completing the essential function during the work week)</i>	CAN BE PERFORMED REMOTELY <i>(Yes/No)</i>	DOES IT REQUIRE PHYSICAL LABOR? <i>(Yes/No)</i>	PHYSICAL REQUIREMENTS
Sample: Installation of network drives	5%	No	Yes	Walking, Standing, Lifting, Carrying
EF 1	15 %	<input type="checkbox"/>	<input type="checkbox"/>	
EF 2	25 %	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/> %	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/> %	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/> %	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/> %	<input type="checkbox"/>	<input type="checkbox"/>	

Essential Functions analysis Form

MAXIMUM Telework hours available in current position <i>(calculated by: adding up the percentage of time annotated above as "Yes" in "Can be performed remotely" column)</i>		COMBINED PERCENTAGE Sample 20% <input type="text"/> %	HOURS PER WEEK 8 of 40 <input type="text"/> of <input type="text"/>	HOURS PER PAY PERIOD 16 of 80 <input type="text"/> of <input type="text"/>
5. DMO NAME	6. DMO TELEPHONE NUMBER <i>(Include area code)</i>		7. DMO EMAIL ADDRESS	
<input type="text"/>	<input type="text"/>		<input type="text"/>	
DMO's Signature		<input type="text"/>		
*** When sending this form via electronic means, please ensure the file is encrypted to protect the requestors PII & PHI information.				
This form should be retained separately from the employee's Official (paper or electronic) Personnel File.				

It is the DMO/Supervisor's responsibility to determine the Essential Functions

- This document will become part of the RA record
- Must be reflective of what the EE is doing now
- Used to determine portability
- Must stand to a 3rd party review – DRAC/NRAC will ask tough questions

Reasonable Accommodation Guidance



HCS Guidance Reasonable Accommodation Request

OVERVIEW	
Guidance Name	DMO to conduct Interactive Discussion for RA request
Date Issued	
Author (Last, First)	Masoudian, Neda, HR Specialist (RA)
Authorizing Director	Wunsch, Christopher - Director, RAWC, HCS, VBA

CUSTOMER INQUIRY	
Employee (Last, First):	
Position:	Series/Grade:
Station Name and #: VBACO 101	Case #: 21-

Accommodation requested:

This employee has been found to be a qualified individual with a disability, eligible for the Reasonable Accommodation (RA) program according to the Rehabilitation Act of 1973 and VA Handbook 5975.1.

The next step in the RA process is to meet with the employee to discuss the request and conduct the Interactive Discussion. This part of the process is required by law and must be performed by the Designated Management Official (DMO) together with the employee to fully understand their needs.

Before the Interactive Discussion
Please review this document to prepare for the interactive discussion. It is imperative to understand the RA request, the employee's limitations, the health care provider's (HCP) recommendations, notes in RAP-IS, and complete the Essential Functions Analysis when requested by the District RA Coordinator (DRAC).

Interactive Discussion
The HCP identified the following limitations in the medical documentation as follows:

The HCP recommends the following accommodation(s) due to a medical need:



Here is a short agenda for the Interactive Discussion:

- Review RA requested items
- Review DMO role
- Review Limitations
- Review Essential / Non-Essential functions that are affected.
- Open the floor to the employee to speak about their RA needs. If the employee addresses their specific condition, tell the employee that it is your job as the DMO to focus only on the limitations.
- Conclude the meeting
- DMO should refrain from making a determination during the Interactive Discussion. This serves two purposes:
 - Takes the pressure off the DMO to make an on the spot determination
 - Prevents the DMO from making a decision that is a risk to the Agency and violates the law or VA Policy.

The DRAC recommends the DMO review [Job Accommodation Network \(JAN\)](#) for information and accommodation options related to the employee's limitations.

LIMITATION(S)	JAN LINK
Attention/Concentration	http://askjan.org/limitations/Attentiveness-Concentration.cfm
Sitting	https://askjan.org/limitations/Sitting.cfm
Standing	https://askjan.org/limitations/Standing.cfm
Walking	https://askjan.org/limitations/Walking.cfm
Travel	https://askjan.org/workrelatedfunctions/Commute.cfm , https://askjan.org/solutions/Telework-Work-from-Home-Working-Remotely.cfm
Reaching	https://askjan.org/limitations/Reaching.cfm

It is the DMO's responsibility to make the final decision regarding the RA request. The following options listed are accommodation recommendations for your consideration based upon the guidance provided above:

Other alternate accommodation options:

Previous Reasonable Accommodations on file (including date approved):

Additional information pertinent to the case:



"Building Strategic Partnerships through Service"



"Building Strategic Partnerships through Service"



U.S. Department of Veterans Affairs

Interactive Process and Discussion



- Communication between DMO and EE, in consultation with DRAC, to determine how best to respond to the EE's request
- The request is assessed, and a discussion conducted to review the position's EF, the EE's limitations, and possible accommodations. This process may require more than one discussion
- Evidence indicating that reasonable accommodation could have been achieved through active communication can lead to agency liability for disability discrimination. *Black v. U.S. Postal Service, 106 LRP 34898 , EEOC No. 01A42589 (EEOC 2006).*

Pre - Interactive Process

DMOs actions prior to requesting a meeting with the EE about the RA request

- EE's participation is REQUIRED (*per EEOC and VA Handbook 5975.1*)
- EE authorizes representation with notice
 - EE may have Union Representative present however, this is a non-disciplinary meeting
 - The EE is expected to engage in the Interactive Meeting/answer questions on their own behalf
- Prior to meeting, the DRAC provides information to DMO about EE's functional limitations and the accommodations recommended by the HCP
- DMO prepares for the meeting by understanding exactly what the request is, what the limitations are, understanding the EFs of the position, and preparing any questions
- Understand/Identify Essential and Non-Essential Functions of the position
- Research the accommodation requested at www.askjan.org

Conducting the Interactive Process

During the Interactive Meeting with EE, the DMO should:

In addressing Reasonable Accommodation, the parties should engage in an informal and flexible interactive process to identify the precise limitations of the individual and what accommodations could overcome those limitations. *29 CFR 1630.2*

- Provide overview of the RA process, explain their role (decision maker)
- Discuss limitations provided by DRAC (not the medical condition/diagnosis/disability)
- Discuss RA requested and any comments regarding the RA
- Discuss the Essential/ Non-Essential functions affected
- **DMO is NOT required to make a decision during the interactive meeting but will do so as soon as possible after the discussion**



Post Interactive Process

The DMO will make a determination to:

- Approve the RA as requested or approve an alternate RA as appropriate
- Alternate Accommodation determinations **are not a Denial**

Qualified individuals with disabilities are entitled to reasonable accommodation, but the agency is free to choose the accommodation, as long as it is effective. *Goodman v. U.S. Postal Service, 107 LRP 26229, EEOC No. 0120044371 (EEOC OFO 2007), EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act.*
- **Must consult with OGC/NRAC before making a decision in RAP-IS for a denial**
- Thoroughly complete form VA0857f - Accommodation Request Determination in RAP-IS and add-in detailed notes in the comment section
- **Determination should be written in such a way that a 3rd party (i.e., EEOC) understands the rationale behind the DMO's decision. This is particularly important in cases of denial and where the DMO grants an alternative accommodation.**
- EE and DMO sign the form VA0857f. RAs may be reviewed annually for effectiveness, or within a shorter time frame (trial period)

Denials (Based on Undue Hardship)

- **Removes Essential Function (s).** The requested accommodation would require the removal of an essential function from the position occupied by the employee or from the position for which the applicant applied.
- **Lowers Standards.** The requested accommodation would require lowering a performance or production standard that is required of all employees in similar positions (job series/grade level).
- **Direct Threat.** If an employee needs a reasonable accommodation...to eliminate a direct threat, and refuses to accept an effective accommodation, s/he may not be qualified to remain in the job.
- **The DMO may NOT deny the request for accommodation for the following reason**
The facility cannot fund the cost of the accommodation. The funding is the responsibility of VA as a whole. **Thus, only the Secretary, VA may deny an accommodation based upon cost.**



VA0857-f Accommodation Request Determination

ACCOMMODATION REQUEST DETERMINATION		
1. NAME OF EMPLOYEE MAKING THE REQUEST Doe, John, VBAVAC		REVIEW DATE 7/8/2021
The purpose of this form is to inform you of our decision regarding your request for accommodation and to provide information to you. If our information is incorrect, please inform me as soon as possible.		
2. I AM THE DESIGNATED MANAGEMENT OFFICIAL (DMO) FOR THIS REQUEST. MY CONTACT INFORMATION IS BELOW.		
3. MY NAME IS Smith, Jane VBASLOU	4. MY PHONE NO. IS (123) 555-5555	5. MY EMAIL IS Jane.Smith000@va.gov
6. THIS ACCOMMODATION WILL ALLOW YOU TO EF - Perform essential job functions or access the work environment.		
7. YOU REQUESTED THE FOLLOWING ACCOMMODATION A46 - Sit to Stand equipment		
8. YOUR REQUEST IS APPROVED, AND WILL BEGIN ON 7/9/2020		
9. ALTHOUGH WE ARE NOT PROVIDING THE ACCOMMODATION REQUESTED, WE ARE OFFERING AN ACCOMMODATION WHICH WE BELIEVE WOULD BE EFFECTIVE Not applicable. Approved as is.		
10. WE BELIEVE THIS ACCOMMODATION WOULD BE EFFECTIVE BECAUSE Not applicable. Approved as is.		
11. YOUR ORIGINAL REQUEST WAS DENIED BECAUSE: Not applicable. Approved as is.		

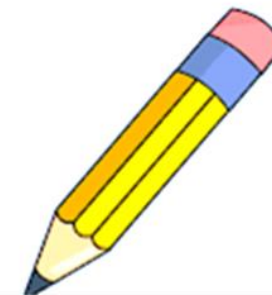
VA FORM 0857f
MAY 2013

12. DETAILED REASONS FOR THE DENIAL OF THE ORIGINAL REQUEST: Not applicable. Approved as is.	
13. YOU WILL HAVE A WEEK FROM THE DATE OF THIS NOTICE TO DECIDE WHETHER TO ACCEPT THE ALTERNATIVE ACCOMMODATION OFFERED. IF YOU DECIDE NOT TO ACCEPT, YOUR OPTIONS ARE LISTED BELOW.	
14. IF YOU WISH TO REQUEST RECONSIDERATION OF THIS DECISION, YOU MUST: Within seven (7) calendar days of receipt of this denial, request reconsideration by the second level Designated Management Official (DMO). After receiving a request for reconsideration, the DMO has 14 calendar days to render a decision and notify the requester, in writing.	
15. IF YOU WISH TO FILE AN EEO COMPLAINT, PURSUE A MERIT SYSTEMS PROTECTION BOARD COMPLAINT OR A UNION GRIEVANCE, GUIDANCE IS PROVIDED BELOW: <ul style="list-style-type: none"> To file an EEO complaint, applicants for employment or employees must contact an EEO counselor within forty-five (45) days of notice of the denial, pursuant to 29 C.F.R. Part 1614. Contact your local Office of Resolution Management for further information. Non-Bargaining Unit Employees may file an Administrative Grievance within 15 calendar days of receiving the denial. Contact your local Human Resources Office for further information. Bargaining Unit Employees may file a grievance in accordance with applicable Collective Bargaining Agreements. Contact your local union representative for further information. 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. Employees and applicants are encouraged to participate in information resolution processes available to address the reasonable accommodation outcome. The ADR process is outlined in VA Directive 5978: Alternative Dispute Resolution. Individuals may participate in ADR as part of the above avenues of redress or independently. If participation is independent of the above avenues of redress, it does not meet the requirements for filing claims under the aforementioned processes. If the employee believes they may also want to pursue other avenues of redress, the employee should check with the appropriate EEO/Union/HR Office to ensure that time requirements are met. Contact your local ADR Coordinator at https://www1.va.gov/adr/docs/ADR_Coordinators_List.pdf for further information. 	
Reconsideration, review, and the use of alternative resources does not affect the time limits for initiating statutory and collective-bargaining claims. Your participating in VA's information alternative dispute resolution process will neither satisfy nor delay time restrictions of the formal processes indicated above.	
16. DMO SIGNATURE Jane Smith	17. DATE
18. I (REQUESTOR) CERTIFY THAT I HAVE RECEIVED THIS FORM John Doe	19. DATE
20. I (REQUESTOR) CERTIFY THAT I ACCEPT THE ALTERNATIVE ACCOMMODATION OFFERED	21. DATE
This form should be retained separately from the employee's Official Personnel Folder.	

VA FORM 0857f, MAY 2013, page 2

Purchase Card Holders (PHC)

- Once VA0857F determination form is signed by DMO/EE, DRAC will contact PCH with order details
- DRAC will provide basic information to complete the request
- *These RA requests must take priority – Kept confidential and ordered as soon as possible*
- Once Equipment arrives, business line's facilities/PHC should assemble/provide equipment to EE as soon as it is delivered
- DRAC and DMO should be notified of equipment being ordered/provided
- Purchase Card Holder completes the 0857i merge PDFs with paid invoice/CAATS
- Provide to DRAC who reviews and forwards to NR
- NRAC processes reimbursements monthly/quarter



Redress of Accommodation Determinations

If an EE is unsatisfied with the DMO determination, they have the following options:

- **EE Reconsideration**
 - Written request within 7 calendar days to DMO or DRAC
- **Second Level DMO**
 - DRAC will provide template/documentations
 - Written Decision within 14 calendar days by Second Level DMO
- EEO Complaint
- Union Grievance (BUE)
- Administrative Grievance (Non-BUE)
- Alternative Dispute Resolution (ADR)



VA Form 0857f - Accommodation Request Determination, Block 15



RA Reconsideration Guidance to Second-Level DMO

 **HCS Guidance**
Reasonable Accommodation Request

OVERVIEW

Guidance Name	RA Reconsideration
Date Issued	Month Day (DD), Year (YY)
Author	First Last Name, HR Specialist (RA)
Authorizing Director	First Last Name, AD, HR CEMO

CUSTOMER INQUIRY

Employee **First Last Name** has been found to be a qualified individual with a disability, eligible for the Reasonable Accommodation (RA) program according to the Rehabilitation Act of 1973 and VA Handbook 5975.1.

A RA determination was completed on **Month DD, YYYY** for the employee. The employee requested **verbally/in writing** a second level review on **Month DD, YYYY**. You have been identified as the second level reviewer. If you are not the second level reviewer, please notify the District RA Coordinator (DRAC) immediately at

VAVBAWAS/CO/VBA_CONT_RACP@VA.gov

VAVBAWAS/CO/VBA_SED_RACP@VA.gov

VAVBAWAS/CO/VBA_NED_RACP@VA.gov

VAVBAWAS/CO/VBA_PAC_RACP@VA.gov

OTM RESPONSE

In accordance with VA Handbook 5975.1, Paragraph 22.a.(1) and VA form 0857f, block 14, "Within seven (7) calendar days of receipt of this denial, request reconsideration by the second level Designated Management Official (DMO). After receiving a request for reconsideration, the DMO has 14 calendar days to render a decision and notify the requester, in writing."

The suspense date for this second level DMO determination is **Month DD, YYYY**. Please use the attached sample memorandum for your decision. Send a copy of the completed memorandum to the DRAC for review prior to issuance to the employee. A partial or full denial of a RA request must be reviewed by Chris Wunsch, National RA Coordinator or the Office of General Counsel prior to issuance to the employee.

The documents provided to the first level DMO **(First Last)** are as follows:

- Health Care Provider's (HCP) documents
- Limitations and recommendations from the Job Accommodation Network (JAN)

- DRAC to DMO guidance memorandum
- Initial 0857F determination form,
- Essential Functions Analysis (if applicable)

Additional information pertinent to this case:

- Interim accommodations of X, Y, Z were provided on Month DD, YYYY
- The EE has stated X, Y, Z

Although the interactive discussion is not mandated for second level RA determinations, an interactive discussion with the employee is encouraged.

The DRAC recommends the following short agenda for the Interactive Discussion:

- Review second level DMO role
- Review RA requested items
- Review initial DMO determination on VA Form 0857F
- Review Limitations
- Review Essential Functions analysis form
- Open the floor to the employee to speak about their RA needs. If the employee addresses their specific medical condition, tell the employee that it is your responsibility as the second level DMO to focus on the limitations and essential functions and provide an effective accommodation
- Conclude the meeting
- The second level DMO should refrain from making a determination during the Interactive Discussion. This serves two purposes:
 - Takes the pressure off the DMO to make an on the spot determination
 - Prevents the DMO from making a decision that is a risk the Agency, violates law, or VA Policy

SOURCE POLICY

[VA Handbook 5975.1, Rehab Act of 1973](#)

[EEOC Enforcement Guidance](#)

[Job Accommodation Network \(JAN\)](#)

FOR ADDITIONAL INFORMATION

Contact the District Reasonable Accommodation Coordinator (DRAC) at:

VAVBAWAS/CO/VBA_CONT_RACP@VA.gov

VAVBAWAS/CO/VBA_SED_RACP@VA.gov

VAVBAWAS/CO/VBA_NED_RACP@VA.gov

VAVBAWAS/CO/VBA_PAC_RACP@VA.gov

Reviewing RA

Reasonable Accommodations may be reviewed if*:

- The EE or Agency factually deem approved RA as ineffective
- The Accommodation is proving to be a hardship
- The EE changes jobs (promoted, demoted, transferred, detailed)
- The Essential Functions of the job changes
- The initial RA was based on a temporary condition
- The initial RA was based on nonspecific flare-ups
- The EE's health conditions improves or degrades
- The physical environment changes (facilities)

*Not an all-inclusive list

Specific Accommodation Requests



Reassignment as an RA

Reassignment is the reasonable accommodation of last resort; that is, an **agency is required to exhaust all other reasonable accommodation possibilities prior to considering reassignment.**

McGee v. U.S. Postal Service, 109 LRP 2684 , EEOC No. 0720060059 (EEOC OFO 2008).

It is required only after it has been determined that (1) there are no effective accommodations that will enable the employee to perform the essential functions of their current position, or (2) all other reasonable accommodations would impose an undue hardship. *However, if both the employer and the employee voluntarily agree that transfer is preferable to remaining in the current position with some form of reasonable accommodation, then the employer may transfer the employee.*

- The employer shall search for a vacant, funded position at the same or lower grade for which the employee is fully qualified...*and* ...which the employee can perform with or without a reasonable accommodation
- This position shall be offered, in lieu of separation from federal service

If no suitable vacant position identified:

- EEOC has stated that an agency is only required to place a qualified individual with a disability in a lateral position or, if one is not available, in a lower-graded position. *Acosta v. Department of Veterans Affairs, 110 LRP 44573, Petition No. 0320100028 (EEOC OFO 2010).*
- *If no viable position is found for which to reassign to in a reasonable amount of time, then the agency is free to terminate for medical inability to perform the job-- the employee cannot perform the essential functions of the position due to medical reasons, with or without an accommodation*

Telework as an RA

An agency must allow an employee to work at home if this accommodation is needed and does not cause undue hardship.

An agency is not restricted to providing reasonable accommodation only in measures that directly allow an employee to perform the essential functions of his position. The obligation can extend to work location where lengthy commuting impairs the ability of the employee to perform once at work. Whether permitting the employee to work at home or transferring the employee to a facility closer to his home is a reasonable accommodation varies from case to case. However, once the employee makes such a request, the agency is obligated to engage in the interactive reasonable accommodation process. Kubik v. Department of Transportation, 101 FEOR 30419 , EEOC No. 01973801 (EEOC OFO 2001).

An increasingly popular RA request in the past three years, have been requests for full time work from home.

Telework as an RA

Determine what accommodations are needed for telework

- Ergonomic equipment (i.e., chair, adjustable desk, footstool)
- Special software requirements (i.e., Dragon Naturally Speaking, JAWS, Zoom-text etc.)
- Larger monitors, adaptive keyboard or mouse
- Assistive technology (i.e., braille embosser)

Ensure written telework agreement is current.

- Work location and schedule (work schedule vs work hours).
- Required tasks
- Expectations for availability by phone, email, video conference.
- Situational telework vs permanent
- Performance expectations

Telework as an RA

Addressing performance issues when teleworking as a reasonable accommodation.

- Set clear goals and timelines.
- Ensure accommodations are effective.
- Communicate regularly.
- Resist the urge to remove telework as a reasonable accommodation.
- Separate performance issue from accommodation issues.
- Document, document, document



Telework as an RA

- EEOC has stated that employers who resort to telework during the COVID-19 pandemic are not automatically required to continue this accommodation once employees are returned to the workplace, especially in situations where employees who are working remotely are unable to perform essential functions of their job.
- But employers will need to consider requests for telework on a case-by-case basis.
- The period of providing telework during COVID-19 pandemic can serve as a trial period that showed whether or not the employee could satisfactorily perform the essential function of the job while teleworking.

Common RA Questions

Does an employer have to change a person's supervisor as a form of reasonable accommodation?

No. An employer does not have to provide an employee with a new supervisor as a reasonable accommodation. Nothing in the ADA, however, prohibits an employer from doing so. Furthermore, although an employer is not required to change supervisors, the ADA may *require that supervisory methods be altered as a form of reasonable accommodation.*

Must an employer withhold discipline or termination of an employee who, because of a disability, violated a conduct rule that is job-related for the position in question and consistent with business necessity?

No. An employer never has to excuse a violation of a uniformly applied conduct rule that is job-related and consistent with business necessity. This means, for example, that an employer never has to tolerate or excuse violence, threats of violence, stealing, or destruction of property. An employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on an employee without a disability.



Final Common RA Question

Is an employer required to provide the reasonable accommodation that the individual wants?

If more than one accommodation is effective, "the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations." Thus, as part of the interactive process, the employer may offer alternative suggestions for reasonable accommodations and discuss their effectiveness in removing the workplace barrier that is impeding the individual with a disability.



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Conclusion

