



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

[REDACTED]
Marvella B.,¹
Complainant,

v.

Emily W. Murphy,
Administrator,
General Services Administration,
Agency.

Request No. 0520180380

Appeal No. 0120150997

Hearing No. 520-2013-00297X

Agency No. 12R2FASSJ03

DECISION ON REQUEST FOR RECONSIDERATION

The Agency requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 0120150997 (April 3, 2018). EEOC Regulations provide that the Commission may, in its discretion, grant a request to reconsider any previous Commission decision issued pursuant to 29 C.F.R. § 1614.405(a), where the requesting party demonstrates that: (1) the appellate decision involved a clearly erroneous interpretation of material fact or law; or (2) the appellate decision will have a substantial impact on the policies, practices, or operations of the agency. See 29 C.F.R. § 1614.405(c).

In her underlying complaint, Complainant alleged that the Agency discriminated against her on the bases of race (African-American), sex (female), and age (40) when:

1. Beginning February 2011 and continuing, management has been asking Complainant if she was planning to retire;
2. On February 21, 2011, management detailed Complainant to the Digitization Project;

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

3. On March 7, 2011, management took away Complainant's Contracting Officer's warrant; and
4. On October 25, 2011, Complainant was informed that management held a meeting with contract employees and attempted to solicit derogatory written statements about Complainant's work performance on the Digitization Project.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). The AJ determined *sua sponte* that the complaint did not warrant a hearing and, over Complainant's objections, issued a decision without a hearing in favor of the Agency finding no discrimination. The Agency issued a final action fully implementing the AJ's decision. Complainant appealed the Agency's final action to the Commission. In EEOC Appeal No. 0120150997, the Commission determined judgment as a matter of law for the Agency should not have granted as to Complainant's hostile work environment claim. The Commission also found the Agency properly dismissed claims 2 and 3 as untimely discrete acts. However, the Commission noted that neither the AJ's decision nor the Agency's final action addressed claims 2 and 3, even though they appeared to be part of the same unlawful practice as timely harassment claims 1 and 4. Thus, the Commission ordered the AJ to reverse the Agency's dismissal of claims 2 and 3 and conduct a hearing on Complainant's hostile work environment claim, consisting of allegations 1 through 4.

After reviewing the previous decision and the entire record, the Commission finds that the request fails to meet the criteria of 29 C.F.R. § 1614.405(c), and it is the decision of the Commission to deny the request. The decision in EEOC Appeal No. 0120150997 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

ORDER

The Agency is directed to submit a copy of the complaint file to the EEOC New York District Office Hearings Unit within 15 days of the date this decision is issued. The Agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the New York District Office Hearings Unit. Thereafter, the Administrative Judge shall reverse the Agency's procedural dismissal of claims 2 and 3 of the instant matter and shall hold a hearing on Complainant's complaint, claims 1 through 4 of the instant matter. At the hearing, Complainant shall have the opportunity to present her case and the opportunity to cross-examine all Agency witnesses, including S1 and S3. The Administrative Judge shall thereafter issue a decision in accordance with 29 C.F.R. § 1614.109, and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)


This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you.

You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission. The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

September 28, 2018

Date