



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

[REDACTED]  
Alvaro M.,<sup>1</sup>  
Complainant,

v.

James N. Mattis,  
Secretary,  
Department of Defense  
(Defense Commissary Agency),  
Agency.

Request No. 0520180403

Appeal No. 0120180260

Agency No. DECA000412017

**DECISION ON REQUEST FOR RECONSIDERATION**

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 0120180260 (Apr. 5, 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).

Complainant was employed by Brevard Achievement Center (staffing firm), serving the Agency in the position of Material Handler in the warehouse of Hurlburt Field Air Force Base Commissary in Florida. In the underlying complaint, Complainant alleged that the Agency discriminated against him based on his disability (Attention Deficit Hyperactivity Disorder) when: (1) on October 27, 2016, he was suspended, and on November 10, 2016, he was terminated; and (2) by not stopping people from unnecessarily gathering and talking in areas he worked in the warehouse, he was not reasonably accommodated and an unsafe work area was created (e.g., people distracting him and getting in the way of his forklift and palette machinery, slowing him down and making an accident more likely).

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<sup>1</sup> 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.

The Agency initially dismissed the complaint. Complainant appealed and, in Alvaro M. v. Dep't of Def., EEOC Appeal No. 0120171459 (Aug. 11, 2017), the Commission reversed the dismissal and remanded the matter ordering the Agency to gather information on whether the Commissary was Complainant's common law joint employer, and then accept claims (1) and (2) for investigation or issue a final decision dismissing them. After gathering additional information, the Agency issued another final decision dismissing the complaint finding that Complainant was an employee of the staffing firm, not the Agency. On appeal, the Commission affirmed the Agency's dismissal finding that the Agency did not have sufficient control (or right to control) over Complainant's employment to be deemed his common law joint employer.

In his request for reconsideration, Complainant expresses his disagreement with the previous decision and reiterates arguments previously made on appeal. The Commission emphasizes that a request for reconsideration is not a second appeal to the Commission. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at 9-18 (Aug. 5, 2015); *see, e.g., Lopez v. Dep't of Agric.*, EEOC Request No. 0520070736 (Aug. 20, 2007). Rather, a reconsideration request is an opportunity to demonstrate that the appellate decision involved a clearly erroneous interpretation of material fact or law, or will have a substantial impact on the policies, practices, or operations of the Agency. Complainant has not done so here.

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. 0120180260 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

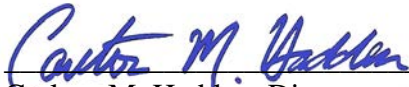
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (P0610)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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.

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:

A handwritten signature in blue ink, reading "Carlton M. Hadden", is written over a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

October 18, 2018

Date