



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507**

██████████
Matilda C.,¹
Complainant,

v.

Janet Dhillon,
Chair,
Equal Employment Opportunity Commission,²
Agency.

Request No. 0520180610

Appeal No. 0720140027

Agency No. 2011-33832

DECISION ON REQUEST FOR RECONSIDERATION

BACKGROUND

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 0720140027 (July 31, 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).

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.

² In the present matter, the Equal Employment Opportunity Commission (EEOC) is both the respondent agency and the adjudicatory authority. The Commission's adjudicatory function is housed in an office that is separate and independent from those offices charged with in-house processing and resolution of discrimination complaints. For the purposes of this decision, the term "Commission" or "EEOC" is used when referring to the adjudicatory authority and the term "Agency" is used when referring to the respondent party to this action.

In our previous decision, the Commission, in pertinent part, reversed an Administrative Judge's (AJ) finding that Complainant had proved that she was subjected to sex discrimination when it issued her a 14-day suspension for using a racial slur in reference to an African-American coworker (C1). In that decision, the Commission determined that the issue in the case was whether Complainant's supervisor (S1) reasonably believed an employee's (C2's) allegation that Complainant used a racial slur, but that the AJ improperly substituted her own judgment for that of S1's judgment without concluding that he (S1) was not credible or that his acceptance of C2's statement about the matter was so unreasonable that one could only conclude that he was masking discriminatory animus.

The Commission reasoned that any shift in the Agency's explanation for its treatment of C1's alleged use of a sexist slur did not show that S1 unreasonably believed Complainant used a racial slur, because the Agency's explanations in this case only pertain to the reasons for suspending Complainant. Additionally, the Commission reasoned that any evidence S1 may have disregarded in his investigation of C1's alleged use of a sexual slur did not show that S1 unreasonably believed Complainant used a racial slur. Finally, the Commission determined that, even if Complainant did not have a history of conflict with African-American males, a lack of such history did not show that S1 unreasonably believed Complainant used a racial slur. The Commission noted that S1 found C2's claim that Complainant used a racial slur more credible than another employee's (C3's) assertion that Complainant did not use a racial slur.

RECONSIDERATION REQUEST

In her request for reconsideration, Complainant contends that our previous decision was clearly erroneous because it did not defer to the AJ's credibility determination that Complainant's explanations for her actions were more credible than S1's explanations. Complainant further contends that our previous decision improperly failed to defer to the AJ's determination that the Agency was not credible in asserting that it did not do anything about a sexist slur allegedly made against Complainant because the slur reportedly occurred at a union meeting. Complainant maintains that the Agency's failure to act on evidence that the sexist slur was made against her supports the AJ's finding that her suspension was based on sex discrimination. The Agency maintains that we should deny Complainant's reconsideration request.

ANALYSIS AND FINDINGS

After a thorough review of the record, we reiterate that the pivotal issue in this case is whether, at the time of his decision to suspend Complainant, S1 reasonably believed C2's allegation that Complainant used a racial slur. The AJ rejected S1's determination partly on the basis that the AJ found C3's hearing testimony more credible than C2's testimony. "Perhaps [C2] was more credible at the time of [S1's] investigation, but I found her testimony not credible at the Hearing, for reasons stated above," the AJ stated in her decision. AJ's Decision, p. 10. However, the issue is not how credible C2 and C3 were about the racist slur in their testimony at the hearing, but whether S1 unreasonably believed C2 over C3 at the time he issued Complainant the suspension. See Lonergan v. Dep't of Justice, EEOC Appeal No. 01976348 (Feb. 1, 2000) (no discrimination

found where management reasonably believed suspended complainant engaged in misconduct). There is no evidence that S1's determination that C2 was telling the truth was so unreasonable that it reflects discriminatory animus.

The Agency also notes that the AJ determined that S1's suspension was pretext for sex discrimination because the Agency said it conducted the investigation concerning C1's sexist comments at a union meeting, yet also asserted that conduct at the union meeting could not be investigated or acted upon. However, as stated in our previous decision, even if the Agency's explanation shifted regarding the investigation of the sexist comment, that would not necessarily reflect negatively upon the credibility of the Agency's explanation regarding Complainant's suspension.

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), Chap. 9 § VI.A (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 presented any persuasive evidence to support reconsideration of the Commission's decision.

Thus, 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. 0720140007 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:

/s/Bernadette B. Wilson
Bernadette B. Wilson
Executive Officer
Executive Secretariat

November 26, 2019
Date