



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

████████████████████
Man H.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service,
Agency.

Request No. 2019000216

Appeal No. 0120181824

Agency No. 4G-780-0081-18

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Man H. v. U.S. Postal Serv., EEOC Appeal No. 0120181824 (Aug. 16, 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 his underlying complaint, Complainant claimed that he was discriminated against on the bases of his race (Caucasian), color (white), disability (cervical pinched nerve), age (51), and in reprisal for his prior EEO activity when:

1. On January 23, 2018, his request for reasonable accommodation was denied; and
2. On February 13, 2018, Complainant's request to reconsider the decision regarding his accommodation was also denied.

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.

In its final decision, the Agency dismissed the complaint pursuant to 29 C.F.R. § 1614.107(a)(2) on the grounds that Complainant failed to file his formal complaint in a timely manner. The Agency stated that Complainant failed to file his formal complaint within fifteen days of his receipt of the Notice of Right to File a Formal Complaint.

On appeal, the Commission affirmed the Agency's final decision. We found that Complainant received his Notice of Right to File a Formal Complaint on March 17, 2018, but did not file his formal complaint until April 5, 2018, after the expiration of the 15-day filing period. We noted that Complainant contended he was unable to file his formal complaint in a timely manner because he had undergone outpatient surgery on March 23, 2018, followed by 15 days of being on a strong pain reliever. However, we found that, other than his bare assertion, the record contained no evidence that Complainant was so incapacitated that he was unable to meet the 15-day regulatory time limit.

In his request for reconsideration, Complainant submits documentation from his physician which states that he had surgery on his neck on March 23, 2018. The physician further states that Complainant was on medication for approximately 30 days afterwards.

The Commission is sympathetic to Complainant's situation; however, the Commission has consistently held that an extension is warranted only where an individual is so incapacitated by his or her condition that he or she is unable to meet the regulatory time limits. The Commission previously found that Complainant failed to provide sufficiently persuasive evidence to waive the regulatory filing limitation. The Commission previously found that Complainant failed to provide sufficiently persuasive evidence to waive the regulatory filing limitation. 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. Complainant did not provide documentation in support of his argument that he was incapacitated until his submission in this request to reconsider. There is no indication why he could not have submitted this medical documentation when he filed his appeal from the final agency decision. We discern no persuasive argument or evidence in Complainant's request for reconsideration that satisfy the criteria for granting a request to reconsider.

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. 0120181824 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:



Carlton M. Hadden, Director
Office of Federal Operations

February 21, 2019

Date